DOCUMENT RESUME

ED 089 436 EA 006 023

AUTHOR	Robbins, Jerry H.
TITLE	The Legal Status of Child Abuse and Neglect in Mississippi.
SPONS AGENCY	Governor's Office of Education and Training, Jackson, Miss.
PUB DATE	Apr 74
NOTE	101p.
EDRS PRICE	MF-$0.75 HC-$5.40 PLUS POSTAGE
DESCRIPTORS	*Child Abuse; *Court Cases; Family Problems; *Legal Problems; *Parent Child Relationship; *State Legislation
IDENTIFIERS	Mississippi; Neglected Children

ABSTRACT

Much legislation on child protection has been enacted in the past decade, largely because of the wide public interest that was attracted by the complex and emotional problems related to protecting children from physical maltreatment by their own parents. This paper, one of a series sponsored by the governor's office of education and training, presents the text of Mississippi law on the subject; discusses the statutory provisions in other selected States; examines significant case law in Mississippi and other States; presents model acts that have been adopted by a number of States; and makes specific recommendations for improving Mississippi State law. (JF)

ED 089436

THE LEGAL STATUS OF CHILD ABUSE AND NEGLECT IN MISSISSIPPI

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Willie Price, Professor of Home Economics; Dr. Joan Carson, Assistant Professor of Elementary Education; and George Lyles, a student in the School of Law; all at The University of Mississippi.

University, Mississippi
April, 1974

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

EA 006 023

THE LEGAL STATUS OF CHILD ABUSE AND NEGLECT IN MISSISSIPPI

by

Jerry H. Robbins, Ed.D.

The history of child protection in the United States indicates that public interest in children is to a large extent cyclical, recurring between periods of relative indifference. Much legislation on child protection has been enacted in the past decade, largely because of the wide public interest that was attracted by the complex and emotional problems related to protecting children from physical maltreatment by their own parents.

A century ago reformers started "cruelty" societies under private sponsorship. Juvenile delinquency and institutional reform were the primary concerns during the juneville court movement of the early twentieth century. The recent interest has been brought about, at least in part, by an increase in documentation of child abuse under medical leadership using such technology as the X-ray machine.

Present-day thought is increasingly coming to the point where there is agreement that the study, understanding, and development of programs to deal effectively with child abuse and neglect are beyond the professional competence of any one of the related professional disciplines--

law, medicine, social work, psychiatry, psychology, and others --and beyond the capacity of any single community resource-- law enforcement, welfare programs, courts, hospitals, private family agencies, schools, and so forth. However, coordination of all these resources remains a problem in many states.

All 50 states and the District of Columbia, Puerto Rico, and the Virgin Islands have some form of statute requiring that the physical abuse of children be reported to public authorities. (1) Usually, only physical abuse is covered, but in at least two states, Kansas and Kentucky, the definition of child abuse has been enlarged to cover sexual and emotional abuse. (2) Few state laws include substantial provisions for follow-up social services. Thirty-one impose criminal sanctions for failure to report. At the present time, no state approaches the problem of child abuse from a multidisciplinary point of view. (3)

Too frequently, only a select few professional groups like doctors and nurses are required to report suspected abuse cases. Teachers, neighbors, and relatives who might be aware of a problem before it becomes serious enough to require medical attention are included in mandatory reporting legislation in 16 states. Every state grants immunity to persons required to report, but only a few give similar protection to persons not mandated to report but who do so in good faith. Thirty-nine prohibit "privileged communication" between either husband and wife or doctor and patient in matters involving child abuse. (4)

Twenty-nine states have established some sort of central registry for keeping track of suspected child abuse cases. Only

four states' statutes (Washington, Louisiana, Oregon, and Alaska) provide for cooperation with other states in exchanging information and establishing a central registry. (5)

Once abuse has been detected, there are few provisions to protect the child's interests. At least four states (Kansas, Tennessee, Colorado, and New York) make it mandatory for a guardian ad litem to be appointed in cases of suspected child abuse. (6)

The job of educating professionals required to report under the law is mandated only in New York state. Usually the task is assigned to the state welfare department, the state bar association, the state medical association or some community action group. (7)

Statutory Law

Mississippi. Section 7187-12 of 5A Mississippi Code 1942 Annotated (Supp. 1972) provides for the youth court to have jurisdiction over a child found to be neglected:

> §7187-12. Violating order of court-contempt; punishment.
>
> In all cases where the child is found to be a neglected or delinquent child, as defined in this act, the parent or parents, or guardian, or person or persons having the custody of such child, or any other person, who, by any act or acts of willful commission or omission, is found by the court to be encouraging, causing, or contributing to the neglect of delinquency of such child may be required by the court to do or to omit to do any act or acts which the judge may deem reasonable and necessary for the welfare of such child. Failure to comply with such requirements shall be contempt of court, and

punished as such; and any person who willfully violates, neglects, or refuses to obey or perform any order of the court shall be in contempt of court and punished as such. Any person found in contempt of the court for failure to obey or fulfill any of the provisions of this act, or any order of the court, shall be punished by a fine not to exceed Five Hundred Dollars ($500.00), or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment.

The following section, 7187-13, makes contributing to the neglect of a minor a misdemeanor:

§7187-13. Contributing to the neglect or delinquency of a child made a misdemeanor.

Any parent, guardian, or any other person who willfully commits any act or omits the performance of any duty which act or omission contributes to or tends to contribute to the neglect or delinquency of any child as defined in this act, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency, or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency, or institution to which such child shall have been committed by the court, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment not to exceed six (6) months in jail, or by both such fine and imprisonment. Nothing contained in this section shall prevent the defendant from being charged with the specific crime by an affidavit as is now provided for the charges of criminal offenses against defendants charged with the commission of a misdemeanor, nor shall such defendant be denied the right of trial by jury. If the defendant in any case within this section who is entitled to a trial by jury shall demand it or shall not waive trial by jury, the court shall then summon a jury as is provided by law and give the defendant a full and complete opportunity to be heard before such a jury, and in the event the defendant

should desire to appeal from such proceedings or the result of any trial by jury or by the court, then such an appeal shall be in accordance with the provisions of Section 1616 of the Mississippi Code of 1942, Recompiled.

Husbands and wives may testify against each other in cases involving child neglect, according to § 13-1-5 of 4 Mississippi Code 1972 Annotated.

§13-1-5. Competency of husband and wife.

Husbands and wives may be introduced by each other as witnesses in all cases, civil or criminal, and shall be competent witnesses in their own behalf, as against each other, in all controversies between them. A criminal prosecution of either husband or wife for contributing to the neglect or delinquency of a child or desertion or nonsupport of a child under the age of sixteen (16) years or abandonment of children shall be deemed controversies between husband and wife for the purpose of this section. But in all other instances where either of them is a party litigant the other shall not be competent as a witness and shall not be required to answer interrogatories or to make discovery of any matters involved in any such other instances without the consent of both.

The duties of the state department of public welfare are enumerated in §43-17-7 of 11 Mississippi Code 1972 Annotated. These duties include:

(i) When the state agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse or exploitation of such child, the state department shall bring such condition to the attention of the appropriate court or law enforcement agencies, and provide such data with respect to the situation as the department may have;

(j) Provide for the development and implementation of a program under which the department will undertake, in the case of a child born out of wedlock who is receiving aid authorized herein, to establish the paternity of such child and secure support for him; and in the case of any child receiving aid from the department who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other states to obtain or enforce court orders for support.

(k) Provide for entering into cooperative arrangements with appropriate courts and law enforcement officials to assist the department in administering the program referred to in clause (j), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and with respect to any other matters of common concern to such courts or officials in the department.

The procedure for handling child neglect cases in Mississippi is given in § 43-17-27 of 11 Mississippi Code 1972 Annotated.

§43-17-27. Certification of facts as to desertation or neglect of persons receiving aid; proceedings against deserting parent.

(1) Whenever any parent or responsible relative shall make an application to the department of public welfare for an aid to dependent children grant, and an investigation of the circumstances of the child or children reveals that the child or children were put in needy circumstances by reason of the fact that the said child or children were either deserted by such parent or parents, or that the parent or parents of such dependent child or children wilfully neglected or refused to provide for the support and maintenance of his or her child or children under the age of sixteen years, leaving such child or children in destitute or necessitous

circumstances, and an aid to dependent children grant is furnished said applicant for such child or children, then it shall be the duty of the department of public welfare to certify such fact or facts to the sheriff, and to the county attorney, if any, and to the grand jury at its next meeting, in the county in which the offense occured, and to the district attorney of the circuit court district in which the county is located. When such fact or facts are so certified, the department of public welfare shall also forward to the sheriff, grand jury, and to the county and district attorney referred to above, copies of all written statements made to representatives of said department by the applicant, the dependent child or children, or by any other persons having knowledge of facts material to the matter.

(2) All state, district, county and municipal officials and all public and private agencies shall cooperate in the location of parents who have deserted or who wilfully neglect or refuse to provide for the support and maintenance of his or her child or children under the age of sixteen years, leaving such child or children in distitute or necessitous circumstances, irrespective of whether such children are or are not receiving public assistance under sections 43-17-1 through 43-17-25, Mississippi Code of 1972, and shall on request supply the department of public welfare, or any sheriff, grand jury, probation officer, county or district attorney in this state with all information on hand relative to the location, income, and property of such absent parents, notwithstanding any other provision of law making such information confidential and with all information on hand relative to the location and prosecution of any person who has, by means of false statement or misrepresentation or by impersonation or other fradulent device, obtained aid for a child under sections 43-17-1 through 43-17-25, Mississippi Code of 1972. The department of public welfare shall use such information

only for the purposes of administration of aid to needy children, including the investigation of the circumstances of the children for whom aid to dependent children grants are sought and the certification of the fact or facts referred to in subsection 1 hereof, and the sheriff, county attorney, grand jury, probation officer and district attorney shall use it only for the purpose of investigating or enforcing the support liability of such absent parents or for the prosecution of other persons mentioned herein, and neither the department nor said authorities shall use the information, or disclose it, for any other purpose.

Nothing in the preceding paragraph shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state if such information is required to be kept confidential by the federal law or lawful regulations relating to such program.

(3) It shall be the duty of every sheriff, grand jury, county and district attorney to institute appropriate criminal proceedings against any person who they have reason to believe and do believe has deserted or wilfully neglected or refused to provide for the support and maintenance of his or her child or children under the age of sixteen year, leaving such child or children in destitute or necessitous circumstances in violation of section 97-5-3, Mississippi Code of 1972.

(4) The state board of public welfare shall have the power and it shall be its duty to make all necessary rules and regulations for carrying out the purposes of this chapter as related to the department of public welfare. Not later than thirty days after the first day of January of each year, the state board of public welfare shall cause to be published for the preceding calendar year (1) the total number of aid to dependent children cases in each county eligible for aid involving a deserting parent or a parent who wilfully neglected or refused to provide for the support and maintenance of his or her child; (2) the number of aid to dependent children cases involving a deserting parent in which special

> investigations were made pursuant to the provisions of this chapter; (3) the number of special investigations completed during the period; (4) the number of investigations pending at the end of the period; (5) a detailed accounting of the disposition of the cases, civil and criminal, by the courts; and (6) the number of aid to dependent children cases closed by the county welfare departments either during or immediately following special investigations because the alleged "deserting" parent was found to be living with the client; or that the deserting parent returned home; or because of failure to comply with the "suitable home" requirements; or because the client refused to cooperate in the prosecution, or in the reciprocal support case against the deserting parent; or that the relative was found not living in the home with the children; and such other information as the board may deem proper. The preceding information shall be mailed within the thirty day period specified above to the governor, lieutenant governor, each legislator, and to such other officials and agencies as the board shall deem proper.

The following sections of Chapter 19 of Title 43 of 11 Mississippi Code 1972 Annotated deal with the support of natural children.

> §43-19-1. Reports of natural parents deserting or refusing to support their natural children; proceedings to establish paternity and to require support.
>
> Whenever the natural parent or relative of a natural child or children shall make an application to the department of public welfare for an aid to dependent children grant, and an investigation of the circumstances of the child or children reveals that the child or children were put in needy circumstances by reason of the desertion or abandonment of such child or children by a natural parent or that such parent wilfully neglected or refused to provide for the support and maintenance of such child or children or that the mother of such natural child has neglected, failed or refused to initiate proceedings to establish the paternity, and to provide for the support of such natural child or children by the putative father, leaving

such child or children in destitute or necessitous circumstances, and an aid to dependent children grant is furnished said applicant for such child or children, then, in either such event, it shall be the duty of the department of public welfare to certify such fact or facts to the youth counselor, if any, county attorney of the county in which the application is filed, if such county does not have a county attorney then to the district attorney of the district in which such county is located, and to the youth court division of the county court of each county now or hereafter having a county court, or to the youth court division of the chancery court of each county in which no county court is maintained. When such fact or facts are so certified, the department of public welfare shall also forward to the youth counselor, if any, county attorney, district attorney, youth court division of the county court or the youth court division of the chancery court if such county has no county court, copies of all written statements made to representatives of said department by the applicant, and by any other persons having knowledge of facts material to the matter.

If, in the opinion of the county or district attorney such action be feasible and in the best public interest, the county or district attorney, as the case may be, is hereby authorized to and shall initiate appropriate proceedings to establish the paternity of such child or children and to require the natural parent of such child or children to provide reasonable support and maintenance for such child or children.

§43-19-3. Authority of youth court.

The youth court may initiate appropriate proceedings and determine whether the child is a "neglected child" as defined by section 43-21-5, Mississippi Code of 1972. If the court finds that the child is neglected within the provision of said statute, it shall so adjudge and decree, and may, by order duly entered, place the child under supervision in the care of a relative, under such terms as the court shall determine and direct, or place the children in a suitable family home, or foster home.

§43-19-5. Location of natural parents who desert or fail to provide for their natural children; disclosure of information.

All state, district, county and municipal officials and all public and private agencies shall cooperate in the location of natural parents, or a person alleged to be a natural parent, who have deserted or who willfully neglect or refuse to provide for the support and maintenance of his or her natural child or children under the age of sixteen years, leaving such child or children in destitute or necessitous circumstances, irrespective of whether such children are or are not receiving public assistance under sections 43-17-1 through 43-17-25, Mississippi Code of 1972, and shall, on request, supply the department of public welfare or any county attorney, district attorney, youth court, chancery court, circuit court, or probation officer in this state with all information on hand relative to the location, income, and property of such natural parent, notwithstanding any other provision of law making such information confidential. The department of public welfare shall use such information only for the purposes of administration of aid to needy children, including the investigation of the circumstances of the children for whom aid to dependent children grants are sought and the certification of the fact or facts referred to in section 43-19-1, and the county attorney, district attorney, youth court, chancery court, circuit court or probation officer shall use it only for the purpose of investigating or enforcing the paternity proceedings and support liability of such natural parent or parents and neither the department nor said authorities shall use the information, or disclose it, for any other purpose.

Nothing in the preceding paragraph shall be construed to compel the disclosure of information relating to a natural parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state if such information is required to be kept confidential by the federal law or lawful regulations relative to such program.

§43-19-7. Parties to suits; authority of welfare departments and personnel.

This chapter shall not be so construed as to make or create any new or additional party or parties to any such suits as are mentioned in this chapter; and, the state department of public welfare, county welfare department, county welfare agent or any other such personnel shall not be authorized except at the special request of the youth court in writing and then only to the extent therein granted or requested.

In Mississippi a "neglected child" is defined by §43-21-5 of 11 Mississippi Code 1972 Annotated as follows:

"Neglected child" means a child whose parent, guardian or custodian, or any person legally responsible for his care or support, neglects or refuses when able so to do, to provide for him proper or necessary care or support, or education as required by law, or medical, surgical or other care necessary for his well-being; or who is otherwise without proper care, custody, supervision or support; or who, for any reason, and as the result of the faults or habits of anyone, lacks the special care made necessary for him by reason of his mental condition, whether said condition be mentally defective or mentally disordered; or who, for any reason, and as the result of the faults or habits of anyone, lacks the care necessary for his health, morals, or well-being; or who is found in a disreputable place, or who associates with vagrant, vicious, or immoral persons.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, be considered to be medically neglected under any provision of this act.

The same section defines a "battered child" in this way.

> "Battered child" means a child whose parent, guardian or custodian, or any person legally responsible for his care or support has inflicted serious physical injury or injuries other than by accidental means upon him as a result of abuse or neglect.

The same section defines a "child" in this way:

> "Child" and "youth" are synonymous and each means a person who is less than eighteen (18) years of age.

The Mississippi reporting law, §43-21-11 of 11 Mississippi Code 1972 Annotated, provides as follows:

> §43-21-11. How proceedings instituted.
>
> Whenever any person informs the youth court that a child residing or being within the county is within the purview of this chapter, the court may, in its discretion, make a preliminary inquiry to determine whether the interest of the child or the public requires the court to take further action. During the pendency of such inquiry, the judge may request the county department of public welfare or any youth counselor to make a social investigation concerning the child and present the findings thereof to the court. Thereupon, the court may make an informal adjustment for the best interest of the child without a petition, or may authorize a petition to be filed by a youth counselor, the county or district attorney, or any other reputable person, with the clerk of the youth court, but no child may be committed to any institution or agency except by hearing upon a petition as herein provided.
>
> The proceedings shall be entitled "In the interest of _____, a child."
> The petition shall set forth:
> (a) The name, age, sex, race, and residence of the child.

(b) The name and residence of his parents or guardian, if known, and if not known, stating such fact.

(c) The name and residence of the person having custody or control of the child, if such person be not a parent or guardian.

(d) The facts which bring the child within the purview of this chapter.

If any of the facts herein required are not known by the petitioner, the petition shall so state. The petition shall be verified by affidavit of the petitioner, and such certification may be made upon information and belief.

Any licensed doctor of medicine, licensed doctor of dentistry, intern, resident, or registered nurse having reasonable cause to suspect that a child brought to him or coming before him for examination, care or treatment is a battered child shall cause an oral report to be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the person designated by the judge of the county youth court or family court and to the county welfare department; when the attendance of a physician, dentist, intern, resident, or registered nurse is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate, who shall report or cause a report to be made regarding said child. Such report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries (including any evidence of previous injuries), and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator.

Any licensed doctor of medicine, licensed doctor of dentistry, intern, resident, registered nurse, or hospital participating

> in the making of a report pursuant to this chapter or participating in the judicial proceeding resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

Certain penalties are prescribed in the following two sections, §§43-21-25 and 43-21-27, of 11 Mississippi Code 1972 Annotated.

> §43-21-25. Contributing to delinquency or neglect or violating order of court or provisions of act - contempt; punishment.
>
> In all cases where the child is found to be a neglected or delinquent or battered child, as defined in this act, the parent or parents, or guardian, or person or persons having the custody of such child or any other person, who, by any act or acts of wilful commission or omission, is found by the court to be encouraging, causing or contributing to the neglect may be required by the court to do or omit to do any act or acts which the judge may deem reasonable and necessary for the welfare of such child. Failure to comply with such requirements shall be contempt of court, and punished as such; and any person who wilfully violates, neglects or refuses to obey or perform any order of the court shall be in contempt of court and punished as such. Any person found in contempt of court for failure to obey or fulfill any of the provisions of this act, or any order of the court, shall be punished by a fine not to exceed Five Hundred Dollars ($500.00), or by imprisonment in jail not to exceed ninety (90) days, or by both such fine and imprisonment. Nothing contained in this section shall prevent proceedings against such parent, or parents, or guardian, or any other person hereinabove set out, under any statute of this State or any municipal ordinance defining any act as a crime or misdemeanor.
>
> §43-21-27. Contributing to the neglect or delinquency of child made a misdemeanor.

> Any parent, guardian or any other person who wilfully commits any act or omits the performance of any duty which act or omission contributes to or tends to contribute to the neglect or delinquency or battering of any child as defined in this act, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing any child who has absented himself without permission from the guardianship or custody of any person, agency, or institution to which such child shall have been committed by the court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed Five Hundred Dollars ($500.00), or by imprisonment not to exceed six (6) months in jail, or by both such fine and imprisonment. Nothing contained in this section shall prevent proceedings against such parent, guardian or other person under any statute of this State or any municipal ordiance defining any act as a crime or misdemeanor; provided that nothing in the provisions of this act shall preclude a father, mother, or guardian of any child from having a right to trial by jury when charged with having violated the provisions of this section.
>
> In any proceeding resulting from a report made pursuant to this act, the testimony of the physician making the said report shall not be excluded on the ground that such physician's testimony violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

Chapter 15 of Title 93 of the Mississippi Code 1972 Annotated contains the following sections dealing with the termination of rights of unfit parents.

§93-15-1. Proceedings to terminate rights of parents who are unfit or have abandoned child--petition.

Whenever the parent or parents of a child have abandoned or deserted such child, or are mentally, morally, or otherwise unfit to rear and train such child, any person, agency, or institution may file in the chancery court of the county in which either of the parents reside or can be found, or in the county in which the parental rights of said parent or parents terminated. Before a petition is filed, authority must be granted by the chancery court or chancellor in vacation.

§93-15-3. Setting cause for hearing--service of process.

The chancery court or chancellor may set said cause down for hearing in term time or in vacation. The petition shall be triable either in term time or in vacation, after personal service of process for thirty (30) days, and in case of nonresident defendants or defendants when address is unknown, thirty (30) days after completion of publication; such publication to be governed by sections 13-3-19 and 13-3-21, Mississippi Code of 1972.

§93-15-5. Child, his legal guardian or persons having custody to be made defendant--guardian ad litem.

The child shall be made a party defendant and summons had according to law, and the court or chancellor may, at his discretion, appoint a guardian ad litem. If a child has a legal guardian, the said guardian shall be made a party defendant and service had on such guardian. If the child is in the care, custody and control of any party, agency or institution, whether by court order, consent, or otherwise, such person, agency or institutions shall be made a party defendant or may join in such proceeding as a party complainant.

§93-15-7. Termination of parental rights.

After hearing all the evidence in regard to such petition, if the court or chancellor is satisfied that the parent or parents have abandoned or deserted said child, or are mentally, morally, or otherwise unfit to rear and train said child, then the court may terminate all the parental rights of said parent or parents, including the right of inheritance, and the right of the child to inherit from such parent or parents. The termination of the parental rights of one (1) parent may be made without affecting the parental rights of the other parent should circumstances and evidence ever so warrant.

§93-15-9. Placing child in custody of suitable person, institution, or agency--adoption.

Should the court terminate the parental rights of the parent (if only one (1)) or the parents (if they both be living), then said court shall place said child in the custody of some suitable person, agency or institution, and such person, agency or institution shall have full power to enter a petition under section 93-17-5, Mississippi Code of 1972, consenting to such adoption, and no further notice shall be given in the adoption proceeding to such parent or parents.

§93-15-11. Appeal.

Appeal shall be had from such decrees as in other cases in chancery.

Penalties for the abandonment or desertion of children are given in §§97-5-1 and 97-5-3 of 20 Mississippi Code 1972 Annotated.

§97-5-1. Abandonment of child under age six.

If the father or mother of any child under the age of six years, or any other person having the lawful custody of such child, or to whom such child shall have been confided, shall expose such child

in any highway, street, field, house, out-house, or elsewhere, with intent wholly to abandon it, such person shall, upon conviction, be punished by imprisonment in the penitentiary not more than seven years or in the county jail not more than one year.

§97-5-3. Desertion or non-support of child under age sixteen.

Any person who shall desert or willfully neglect or refuse to provide for the support and maintenance of his or her child or children, including the natural parent of an illegitimate child or children wherein paternity has been established by law or when the natural parent has acknowledged paternity in writing, while said child or children are under the age of sixteen (16) years, leaving such child or children in destitute or necessitous circumstances, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than twenty-five dollars ($25.00), nor more than five hundred dollars ($500.00), or by imprisonment in the penitentiary not exceeding two (2) years, or both, in the discretion of the court.

California. Matters dealing with child abuse and neglect appear in several places in the laws of the state of California. The following sections are from the Welfare and Institutions Code (West Cum. Supp. 1973).

§600. Persons subject to jurisdiction

Any person under the age of 18 years who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge such person to be a dependent child of the court.

(a) Who is in need of proper and effective parental care or control and has no parent or guardian, or has no parent or guardian willing to exercise or capable of exercising such care or control, or has no parent or guardian actually exercising such care or control.

(b) Who is destitute, or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode.

(c) Who is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(d) Whose home is an unfit place for him by reason of neglect, cruelty, depravity, or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

§607. Retention of jurisdiction

The court may retain jurisdiction over any person who is found to be a ward or dependent child of the juvenile court until such ward or dependent child attains the age of 21 years.

§726. Parental control; removal from custody

In all cases wherein a minor is adjudged a ward or dependent child of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward or dependent child shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(b) That the minor has been tried on probation in such custody and has failed to reform.

(c) That the welfare of the minor requires that his custody be taken from his parent or guardian.

§727. Order for care, supervision, custody, maintenance and support of dependent child

When a minor is adjudged a dependent child of the court, on the ground that he is a person described by Section 600,

the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of such minor, including medical treatment, subject to further order of the court.

The court may order the care, custody, control and conduct of such minor to be under the supervision of the probation officer or may commit such minor to the care, custody and control of:

(a) Some reputable person of good moral character who consents to such commitment.

(b) Some association, society, or corporation embracing within its objects the purpose of caring for such minors, with the consent of such association, society, or corporation.

(c) The probation officer, to be boarded out or placed in some suitable family home or suitable private institution subject to the requirements of Chapter 1 (commencing with Section 16000) of Part 4 of Division 9; provided, however, that pending action by the State Department of Social Welfare, the placement of a minor in a home certified as meeting minimum standards for boarding homes by the probation officer shall be legal for all purposes.

(d) Any other public agency organized to provide care for needy of neglected children.

When a minor is adjudged a dependent child of the court, on the ground that he is a person described by subdivision (d) of Section 600 and the court orders that a parent or guardian shall retain custody of such minor subject to the supervision of the probation officer, the parent or guardian shall be required, as a condition of his continued custody of such minor, to participate in a counseling program to be provided by an appropriate agency designated by the court.

§727.6 Retention by parent or guardian of minor allegedly living in unfit home; subsequent proceedings

> In any case in which the court has ordered that a parent or guardian shall retain physical custody of a minor who is found to be a person described in subdivision (d) of Section 600, subject to supervision of the probation officer, whenever the probation officer subsequently receives a report of acts or circumstances which indicate that there is reasonable cause to believe that the minor is a person described in subdivision (d) of Section 600, he shall commence proceedings under this chapter. If, as a result of the proceedings required, the court finds that the minor is a person described in subdivision (d) of Section 600, the court shall remove such minor from the care, custody, and control of those persons or organizations enumerated in Section 727.

The California Civil Code (West Cum. Supp. 1973) contains the following provisions affecting children with difficulties:

> §203. Parental authority; abuse; remedy
>
> Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the Supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.
>
> §232. Persons entitled to be declared free from parental custody and control of either of both of his parents when such person comes within any of the following descriptions:
>
> (a) Who has been left without provision for his identification by his parent or parents or by others or has been left by both of his parents or his sole parent in the care and custody of another without any provision for his support, or without communication from such parent or parents,

for a period of six months with the intent on the part of such parent or parents to abandon such person. Such failure to provide identification, failure to provide, or failure to communicate for a period of six months shall be presumptive evidence of the intent to abandon. Such person shall be deemed and called a person abandoned by such parent or parents.

The fact that a child is in a foster care home, licensed under subdivision (a) of Section 16000 of the Welfare and Institution Code, shall not prevent a licensed adoption agency which is planning adoption placement for the child from instituting, under this subdivision, an action to declare such child free from the custody and control of his parents. When the requesting agency is a licensed county adoption agency, the county counsel and if there is no county counsel, the district attorney shall institute such action.

(b) Person cruelly treated or neglected by parents.

(b) Who has been cruelly treated or neglected by either or both of his parents, if such person has been a dependent child of the juvenile court, and such parent or parents deprived of his custody for the period of one year prior to the filing of a petition praying that he be declared free from the custody and control of such cruel or neglectful parent or parents.

(c) Person whose parents habitually intemperate or morally depraved.

(c) Whose parent or parents are habitually intemperate, or morally depraved, if such person has been a dependent child of the juvenile court, and the parent or parents deprived of his custody because of such intemperance, or moral depravity, for the period of one year continuously immediately prior to the filing of the petition praying that he be declared free from the custody and control of such habitually intemperate or morally depraved parent or parents.

(d) Person whose parents deprived of civil rights.

(d) Whose parent or parents are deprived of their civil rights due to the conviction of a felony, if the felony of which such parent or parents were convicted is of such nature as to prove the unfitness of such parent or parents to have the future custody and control of the child, or if any term of sentence of such parent or parents is of such length that the child will be deprived of a normal home for a period of years.

(e) Person whose parents declared mentally deficient or mentally ill.

(e) Whose parent or parents have been declared by a court of competent jurisdiction to be mentally deficient or mentally ill, if the State Director of Mental Hygiene and the superintendent of the state hospital of which, if any, such parent or parents are inmates or patients certify that such parent or parents so declared to be mentally deficient or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(f) Person with parents incapable of supporting or controlling child

(f) Whose parent or parents are, and will remain incapable of supporting or controlling the child in a proper manner because of mental deficiency or mental illness, if there is testimony to this effect from two medical examiners certified under Section 6750 of the Welfare and Institutions Code. The parent or parents shall be cited to be present at the hearing, and if he or they have no attorney, the judge shall appoint an attorney or attorneys to represent the parent or parents and fix the compensation to be paid by the county for such services, if he determines the parent or parents are not financially able to employ counsel.

Institution of action.

A licensed adoption agency may institute under this section, an action to declare a child, as described in this section, free

from the custody and control of his parents. When the requesting agency is a licensed county adoption agency, the county counsel, or if there is no county counsel, the district attorney shall in a proper case institute such action.

§232.9 Action by welfare or probation department to declare child free from custody and control of parents; children in foster care homes

The State Department of Social Welfare, a county welfare department, a county adoption department, or a county probation department which is planning adoptive placement of a child with a licensed adoption agency, or the State Department of Social Welfare acting as an adoption agency in counties which are not served by a county adoption agency, may initiate an action under Section 232 to declare a child free from the custody and control of his parents. The fact that a child is in a foster care home licensed under subdivision (a) of Section 16000 of the Welfare and Institutions Code shall not prevent the Institution of such an act by any such agency or by a licensed adoption agency pursuant to Section 232.

The county counsel or, if there is no county counsel, the district attorney of the county specified in Section 233 shall, in a proper case, institute the action upon the request of any of the state or county agencies mentioned herein.

If, at the time of the filing of a verified petition by any department or agency specified in this section, the child is in the custody of the petitioner, such petitioner may continue to have custody of the child pending the hearing on the petition unless the court, in its discretion, makes such other orders regarding custody pending the hearing which it finds will best serve and protect the interests and welfare of the child.

§233. Petition; filing; Investigation by probation officer; written report; recommendation

Any interested person may petition the superior court of the county in which a minor person described in Section 232 resides or in which such minor person is found or in which any of the acts constituting abandonment, neglect, cruelty or habitual intemperance occurred, for an order or judgement declaring such minor person free from the custody and control of either or both of his parents. There shall be no filing fee charged for any action instituted in accordance with this section. Upon the filing of such petition, the clerk of the court shall immediately notify the juvenile probation officer who shall immediately investigate the circumstances of said minor person and the circumstances which are alleged to bring said minor person within any of the provisions of Section 232. The juvenile probation officer shall render to the court a written report of his investigation with a recommendation to the court of the proper disposition to be made in the action in the best interests of said minor person. The court shall receive such report in evidence and shall read and consider the contents thereof in rendering its judgement.

§10400. Formation; number and qualifications of organizers. Corporations for the prevention of cruelty to children or animals, or both, may be formed under the General Nonprofit Corporation Law by 20 or more persons, who shall be citizens and residents of this State.

§10404. Power to prefer complaints and aid in prosecution of violations of law. Any such corporation, or any member or officer thereof, may prefer a complaint against any person, before any court or magistrate having jurisdiction, for the violation of any law relating to or affecting children or animals, and may aid in the prosecution of any such offender before such court or magistrate.

> §10405. Official assistance in enforcement of laws. All magistrates, constables, sheriffs, and officers of police shall, as occasion may require, aid any such corporation, its officers, members, and agents, in the enforcement of all laws relating to or affecting children or animals.

The California Penal Code (West Cum. Supp. 1973) contains a number of recently-revised provisions having to do with child abuse and neglect.

> §270. Failure to provide; father; punishment; effect of custody in mother; evidence; mother's obligation; applicability of section; unborn child
>
> If a father of either a legitimate or an illegitimate minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his child, he is guilty of a misdemeanor punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. If a court of competent jurisdiction has made a final adjudication in either a civil or a criminal action that a person is the father of a minor child and the person has notice of such adjudication and he then willfully omits, without lawful excuse, to furnish nesessary clothing, food, shelter, medical attendance or other remedial care for his child, this conduct is punishable by imprisonment in the county jail not exceeding one year or in a state prison not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment. This statute shall not be construed so as to relieve such father from the criminal liability defined herein for such omission merely because the mother of such child is legally entitled to the custody of such child nor because the mother of such

child or any other person, or organization, voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child, or undertakes to do so.

Proof of abandonment or desertion of a child by such father, or the omission by such father to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his child is prima facie evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is willful and without lawful excuse.

The court, in determining the ability of the father to support his child, shall consider all income, including social insurance benefits and gifts.

In the event that the father of either a legitimate or illegitimate minor child dead or for any other reason whatsoever fails to furnish the necessary food, clothing, shelter or medical attendance or other remedial care for his minor child, the mother of said child shall become subject to the provisions of this section and be criminally liable for the support of said minor child during the period of failure on the part of the father to the same extent and in the same manner as the father.

The provisions of this section are applicable whether the parents of such child are married or divorced, and regardless of any decree made in any divorce action relative to alimony or to the support of the child. A child conceived but not yet born is to be deemed an existing person insofar as this section is concerned.

The husband of a woman who bears a child as a result of artifical insemination shall be considered the father of that child for the purposes of this section, if he consented in writing to the artificial insemination.

§272. Causing, encouraging or contributing to delinquency of persons under 18 years; inducing disobedience to court order; punishment

Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Sections 600, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years. The district attorney shall prosecute all violations charged under this section.

§273a. Willful cruelty or unjustifiable punishment of child; endangering life or health

(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.

(2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care of custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

§273d. Corporal injury; infliction upon wife or child; punishment

Any husband who willfully inflicts upon his wife corporal injury resulting in a traumatic condition, and any person who willfully inflicts upon conviction thereof shall be punished by imprisonment in the state prison for not more than 10 years or in the county jail for not more than one year.

§ 11110. Record of reports of suspected infliction of physical injury upon minor and arrests for convictions of violation of section 273a.

The Department of Justice shall maintain records of all reports of suspected infliction of physical injury upon

a minor by other than accidental means and reports of arrests for, and convictions of, violation of Section 273a. On receipt from a city police department, sheriff or district attorney of a copy of a report of suspected infliction of physical injury upon a minor by other than accidental means received from a physician and surgeon, dentist, resident, intern, chiropractor, religious practitioner, registered nurse employed by a public health agency, school, or school district, director of a county welfare department, or any superintendent of schools of any public or private school system or any principal of any public or private school, the department shall transmit to the city police department, sheriff or district attorney, information detailing all previous reports of suspected infliction of physical injury upon the same minor or another minor in the same family by other than accidental means and reports of arrests for, and convictions of violation of Section 273a, concerning the same minor or another minor in the same family.

The department may adopt rules governing recordkeeping and reporting under section 11161.5.

§ 11161.5. Injuries apparently inflicted upon minor by other than accidental means; report by physician, surgeon, dentist, etc.

(a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school

system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social worker, and it appears to the physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, religious practitioner, registered nurse, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, school principal, teacher, licensed day care worker, by an administrator of a public or private summer day camp or child care center or social worker from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, he shall report such fact by telephone and in writing, within 36 hours, to the local police authority having jurisdiction and to the juvenile probation department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries.

Whenever it is brought to the attention of a director of a county welfare department that a minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, he shall file a report as provided in this section, within 36 hours of the time it is brought to his attention.

No person shall incur any civil or criminal liability as a result of making any report authorized by this section.

Copies of all written reports received by the local police authority shall be forwarded to the State Bureau of Criminal Identification. If the records of the Bureau of Criminal Identification maintained pursuant to Section 11110 reveal any reports of suspected infliction of physical injury upon the same minor or upon any other minor in the same family

by other than accidental means, or if the records reveal any arrest or conviction in other localities for a violation of Section 273a inflicted upon the same minor or any other minor in the same family, or if the records reveal any other pertinent information with respect to the same minor or any other minor in the same family, the local reporting agency and the local juvenile probation department shall be immediately notified of the fact.

Reports and other pertinent information received from the bureau shall be made available to: any licensed physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner with regard to his patient or client; any director of a county welfare department, school superintendent, supervisor of child welfare and attendance, certificated pupil personnel employee, or school principal having a direct interest in the welfare of the minor; and any probation department, juvenile probation department, or agency offering child protective services.

(b) If the minor is a person specified in Section 600 of the Welfare and Institutions Code and the duty of the probation officer has been transferred to the county welfare department pursuant to Section 576.5 of the Welfare and Institutions Code, then the report required by subdivision (a) of this section shall also be made to the county welfare department.

Louisiana. In Louisiana, the following definitions are used: (Louisiana Revised Statutes, West Supp. 1973)

§13:1569. Definitions

When used in this part, unless the context otherwise requires:

3 "Child" means a person less than seventeen years of age. The term "Child" also means a person over seventeen but who committed an act of delinquency before attaining the age of seventeen years.

16. "Neglected" or "dependent" child means a child:

a. who has been abandoned by his parents, tutor, or other custodian;

b. who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, tutor, or other custodian or their neglect or refusal, when able to do so, to provide them; or

c. whose parents, tutor or other custodian are unable to discharge their responsibilities to and for the child because of their incarceration, hospitalization, or other physical or mental incapacity; or

d. who has been placed for care or adoption in violation of law.

The juvenile court is given jurisdiction in cases of child neglect, according to this passage:

§13:1570. Jurisdiction

Except as otherwise provided herein, the court shall have exclusive original jurisdiction in proceedings:

A. Concerning any child whose domicile is within the parish or who is found within the parish:

(1) Whose parent or other person legally responsible for the care and support of such child neglects or refuses, when able to do so, to provide proper or necessary support, education as required by law, or medical, surgical or other care necessary for his well-being; or who is abandoned by his parent or other custodian; or who is otherwise without proper care, custody, or support.

The power of the juvenile court, upon finding that a child is neglected, is given in this section:

§ 13:1580. Decree

> If the court shall find that a child is within the purview of R.S. 13:1561 through 13:1592, it may adjudge the child to be a neglected child or delinquent child or a child who is otherwise in need of the protection of the state. The court in its judgement may proceed as follows:
>
> (1) Place the child on probation or under supervision in his own home or in the care or custody of a suitable person elsewhere, upon such conditions as the court shall determine.
>
> (2) Assign the custody of the child to a public or private institution or agency authorized to care for children or to place them in family homes. In committing a child to a private institution or agency, the court shall select one that is approved by the state department of public welfare. Where no institution, social agency or association approved by the state department of public welfare for the care or placement of children is available to the court, the court may commit the child to some other institution, social agency or association, which, in the judgement of the court, is suitable for the care of such child. Said commitment may be for an indefinite period but in no case beyond the minority of the child.
>
> (3) Make such other disposition of the child as the court may deem to be for the best interests of the child, including commitment to a public mental hospital or institution for the mentally defective. Provided that nothing herein shall be construed as authorizing the removal of the child from the custody of his parents unless his welfare or the safety and protection of the public cannot, in the opinion of the court, be adequately safeguarded without such removal.

(4) The court may dismiss the petition or otherwise terminate its jurisdiction at any time for good cause shown.

No adjudication by the court upon the status of any child shall operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of a child or any evidence given in the court shall not operate to disqualify the child in any future civil service application or appointment.

Whenever the court shall assign the custody of a child to any institution or agency it shall transmit with the order of custody or as soon thereafter as practicable a summary of its information concerning the child, and such institution or agency shall give to the court such information concerning such child as the court may at any time require.

The penalties that may be imposed for child neglect are given in this section:

§ 14:92.1 Encouraging or contributing to child delinquency; dependency, or neglect; penalty; suspension of sentence; definitions

A. In all cases where any child shall be a delinquent, dependent or neglected child, as defined in the statutes of this state or by this Section, irrespective of whether any former proceedings have been had to determine the status of such child, the parent or parents, legal guardian, or any person having the custody of such child, or any other person or persons who shall by any act encourage, cause or contribute to the dependence or delinquency of such child, or who acts in conjunction with such child in the acts which cause such child to be dependent or delinquent,

> shall be punished by fine not exceeding one thousand dollars, or by imprisonment for not more than two years, with or without hard labor, or by both fine and imprisonment; provided, however, that the court in which the case is heard may suspend the sentence for violation of the provisions of this section, and impose conditions upon the defendant as to his future conduct, ...

The penalties that may be imposed for child abuse are given in this section:

> § 14:93 Cruelty to juveniles
>
> Cruelty to juveniles is the intentional or criminally negligent mistreatment or neglect, by anyone over the age of seventeen, of any child under the age of seventeen whereby unjustifiable pain or suffering is caused to said child. Lack of knowledge of the child's age shall not be a defense.
>
> Whoever commits the crime of cruelty to juveniles shall be fined not more than one thousand dollars, or imprisoned for not more than two years, with or without hard labor, or both.

In addition to the foregoing, Louisiana has a separate statute under the criminal law section dealing with child abuse and with the reporting requirement. This statute is given below:

> § 14:403. Abuse of children; reports, immunity; central registry; investigations; definitions; waiver of privilege; penalties
>
> A. The purpose of this section is to protect children whose physical or mental health and welfare are adversely affected by abuse and/or neglect and may be further threatened by the conduct of those responsible for their care and protection by

providing for the mandatory reporting of suspected cases by any person having reasonable cause to believe that such case exists. It is intended that as a result of such reports the protective services of the state shall be brought to bear on the situation in an effort to prevent further abuses, and to safeguard and enhance the welfare of these children. This section shall be administered and interpreted to provide the greatest possible protection as promptly as possible for such children.

B. For the purposes of this section the following terms shall mean:

(1) "Person" or "persons" is any individual, partnership, association, agency, or corporation, and specifically shall include city, parish, or state law enforcement agencies.

(2) "Child" is any individual under the age of seventeen years.

(3) "Abuse" is the infliction of physical or mental injury or the causing of the deterioration of a child and shall include exploiting or overworking a child to such an extent that his health, moral or emotional wellbeing is endangered.

(4) "Neglect" is the failure to provide by those legally responsible for the care and maintenance of the child, the proper or necessary support, education as required by law, or medical, surgical, or any other care necessary for his wellbeing.

C. (1) Any person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect such as licensed physicians, interns, or residents, nurses, hospital staff members, teachers, social workers, and other persons or agencies having the responsibility for the care of the children, shall report in accordance with Subsection D of this section.

(2) Any other person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect may report in accordance with Subsection D of this section.

D. (1) Reports reflecting the reporter's belief that a child has been abused or neglected shall be made to the parish child welfare unit, or the parish agency responsible for the protection of juveniles, or to any local or state law enforcement agency. These reports need not name the persons suspected of the alleged abuse or neglect.

(2) All reports shall contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.

(3) All reports received by any local or state law enforcement agency shall be referred to the parish child welfare unit, or to the parish agency responsible for the protection of juveniles.

(4) An oral report shall be made immediately upon learning of the abuse or neglect set forth in Paragraph (1) of this subsection, and a written report shall follow within five days to the same agency or department.

E. Any person other than the alleged violator reporting pursuant to this section in good faith shall have immunity from liability, civil and criminal, that otherwise might be incurred or imposed. Such immunity shall extend to participation in any judicial proceeding resulting from such report.

F. Any privilege between husband and wife, or between any professional person and his client, such as physicians, and ministers, with the exception of the attorney and his client shall not be grounds for excluding evidence at any proceeding regarding the abuse or neglect of the child or the cause thereof.

G. (1) The parish child welfare unit, or the parish agency responsible for the protection of juveniles, shall make a preliminary investigation promptly after receiving either the oral or written report, the primary purpose of which investigation shall be to ascertain the validity of the report.

(2) The investigation shall include the nature, extent, and cause of the abuse and neglect, the identity of the person or persons responsible for the abuse and neglect if known and an interview with the child and a visit to the child's home, if possible.

(3) Upon a determination that there is reason for believing the child to be abused or neglected the parish child welfare unit, or the parish agency responsible for the protection of juveniles, shall conduct a more intensive investigation and as soon as possible shall report the names and conditions of the other children in the home, an evaluation of the parents, or persons responsible for the care of the child, the home environment, and the relationship of the child and other children to the parents, or persons responsible for their care, and all other pertinent data.

(4) The report may also include a physical and psychological or psychiatric examination of some or all of the other children in the home, and of the parents or persons responsible for their care, if the social worker conducting the investigation deems it advisable.

(5) If admission to the home, school, or any place where the child may be, or if permission of the parents or persons responsbile for the child's care for the physical and/or psychological or psychiatric examination cannot be obtained, the court with juvenile jurisdiction, upon cause shown, shall order the parent or

persons responsible for the care of the child, or the person or persons in charge of any place where the child may be, to allow entrance for the interview, the above mentioned examinations, and other investigation.

(6) If before the investigation is complete immediate removal is necessary to protect the child from further abuse or neglect, or to render treatment, the department of public welfare, upon affidavit and with good cause being shown, shall request the juvenile court or other court exercising juvenile jurisdiction to issue an instanter order for the temporary removal and temporary custody of the child pending completion of the investigation and disposition of the case. No provision in this section shall be interpreted as limiting the existing authority of the juvenile court or other court exercising juvenile jurisdiction to issue an instanter order.

(7) The court shall set a date and time for a hearing which shall be within a reasonable time but not more than forty-five days after issuance of the order. The hearing shall be held with preference over other proceedings. The district attorney shall represent the interest of the state, which interest shall be the protection of the child. The court shall also appoint an attorney to represent the sole interest of the child. The juvenile court or other court exercising juvenile jurisdiction shall have jurisdiction to issue any order it deems necessary for the protection and welfare of the child.

(8) The Louisiana Department of Public Welfare, [sic] shall make a complete written report of the investigation within twenty days after issuance of the instanter order to the juvenile court or other court exercising juvenile jurisdiction and to the district attorney.

(9) In cases where immediate removal is not deemed necessary for the protection of the child, but where a reassignment of

custody is indicated, the court shall set a date and time for a hearing which shall be within a reasonable time but not more than forty-five days after the filing of the petition. The hearing shall be held with preference over other proceedings. The district attorney shall represent the interest of the state, which interest shall be the protection of the child. The court shall also appoint an attorney to represent the sole interest of the child.

(10) The Louisiana Department of Public Welfare shall make a complete written report of the investigation within twenty days after the filing of the petition, to the juvenile court or other court exercising juvenile jurisdiction and to the district attorney.

H. There shall be established and maintained in Baton Rouge by the Department of Public Welfare, a central registry of cases of child abuse and/or neglect reported from throughout the state. The department may adopt such rules and regulations as may be necessary in carrying out the provisions of this section; specifically, such rules shall provide for cooperation with local child service agencies, including but not limited to hospitals, clinics, and schools, and cooperation with other states in exchanging reports to effect a national registration system. The provisions of this act shall become operative with regard to the Louisiana Department of Welfare as funds and staff become available.

I. Any person, except those included in Subsection (B) of this section, knowingly and willfully violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than five hundred dollars or imprisoned for not more than six months or both.

Among the responsibilities of the Louisiana State Department of Public Welfare, as defined in the law of

that state, are the ones given below. Note the provision for the establishment of child protection centers.

§ 46:52. Duties of the state department

(8) Administer and supervise all public child welfare activities relating to children who are dependent, neglected, delinquent or physically or mentally handicapped; establish, extend and strengthen services for such children in parish or district departments; license and supervise all parish, municipal and private agencies, institutions and individuals, caring for children, including visitorial powers, under the rules and regulations of the state department; contract with private individuals to hold their homes open for and to care for children in need of temporary or long time foster case and provide such other services for children as may be authorized by law;

(16) Establish child protection centers wherever they are practical throughout the state; provide the necessary staff; coordinate the funding of said centers from federal, state, parish, municipal or private funds as they become available; administer child protection centers for the care, treatment, and protection of abused children, and establish rules and regulations to further the said protection centers. When such centers are established, they shall provide protection and emergency care, investigation, treatment and rehabilitation of children and parents, education programs, record keeping, research, consultation and shall develop programs for volunteer participation and seek long range solutions for child abuse.

Missouri. In Missouri, the Division of Welfare has certain responsibilities for neglected children, as may be seen in the following law:

207.020. Powers of division of welfare

1. In addition to the powers, duties and functions vested in the division of welfare by other provisions of this chapter or by other laws of this state, the division of welfare shall have the power:

(8) To establish, extend and strengthen child welfare services for the protection and care of homeless, dependent and neglected children and children in danger of becoming delinquent;

(16) Upon request, to cooperate with the juvenile court and furnish social studies and reports to the court with respect to children as to whom adoption or neglect petitions have been filed;

(17) To accept for social services and care homeless, dependent or neglected children in second, third and fourth class counties whose legal custody is vested in the division of welfare by the juvenile court; . . . .

Cases of child abuse are to be reported as follows:

210.105. Reports of child abuse, who shall make, how made, contents--immunity of reporter--privilege communication denied

1. Any physican, surgeon, dentist, chiropractor, podiatrist, Christian Science or other health practitioner, registered nurse, school nurse, teacher, social worker, or others with responsibility for care of children for financial remuneration, having reasonable cause to believe that a child under the age of seventeen years brought to him for examination, care or treatment has suffered injury or disability from physical abuse, or neglect inflicted upon him, by other than accidental means; and any hospital to which a child comes or is brought, suffering injury or disability from physical abuse, or neglect inflicted upon him other than by accidental means by a parent or other person responsible for his care shall promptly

report or cause reports to be made to the county welfare office or county juvenile officer in accordance with the provisions of this section. Reports may also be made to an appropriate law enforcement authority.

2. An oral report shall be made by telephone or otherwise, and shall be followed as soon thereafter as possible by a report in writing to the county welfare office or county juvenile officer. The oral report shall be made as soon as practiable. Such reports shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries or disabilities, and any other information that the physician believes might be helpful in establishing the cause of the injuries or disabilities and the identity of the perpetrator.

3. Anyone participating in good faith in the making of a report pursuant to this section or section 210.107 shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, for the making of such report. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

4. Neither the physician-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence regarding a child's injuries or disabilities or the cause thereof in any judicial proceeding resulting from a report made pursuant to this section or to section 210.107.

210.107. Investigation report of, notice to central state welfare office--records how kept

1. The county director of welfare or county juvenile officer shall cause an investigation to be made of the child's injury or disability from physical abuse or neglect reported under the provisions of section 210.105, and shall offer

protective social services to prevent further injuries or disabilities to the child, to safeguard his welfare, and the preserve and stabilize family life whenever possible. The services of voluntary agencies shall be utilized whenever possible in providing protective services.

2. The county director of welfare may, as a result of his investigation, report the child's injury or disability from physical abuse or neglect reported to him to an appropriate law enforcement authority, and shall make such a report to the county juvenile officer. The county juvenile officer may, as a result of his investigation, report the child's injury or disability from physical abuse or neglect reported to him to an appropriate law enforcement officer.

3. Each county welfare office or county juvenile officer shall send a notice of all reported cases of children suffering injury or disability from physical abuse or neglect made under the provisions of this section and section 210.105 to the central state welfare office in Jefferson City within forty-eight hours after receipt of the report. The state office shall compare the notices with others received, and shall keep a cross-reference index or other system so that it may readily determine if the child involved has previously been involved in a case of injury or disability from physical abuse or neglect. If so, the state office shall forthwith notify the county office so that appropriate action can be taken to safeguard the health and welfare of the child.

210.108. Penalty

Any person violating any of the provisions of section 210.105 or 210.107 is guilty of a misdemeanor and shall, upon conviction, be punished as provided by law.

In Missouri, a "child" is defined for the purposes of juvenile courts as a person seventeen years of age or younger, according to § 211.021 of the laws of Missouri. The juvenile courts are given exclusive original jurisdiction in proceedings concerning neglected children, as may be seen in the following passages:

> 211.031. Jurisdiction of juvenile court over children who are neglected or charged with crime
>
> Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:
>
> (1) Involving any child who may be within the county who is alleged to be in need of care and treatment because:
>
> (a) The parents or other persons legally responsible for the care and support of the child neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his well-being; except that reliance by a parent, guardian or custodian upon remedial treatment other than medical or surgical treatment for a child shall not be construed as neglect when the treatment is recognized or permitted under the laws of this state; or
>
> (b) The child is otherwise without proper care, custody or support; . . . .
>
> 211.041. Continuing jurisdiction over child
>
> When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of this chapter in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter until he has attained the age of twenty-one years,

except in cases where he is committed to and received by the state board of training schools, unless jurisdiction has been returned to the committing court by provisions of section 219.220, RSMO, through requests of the court to the board of training schools.

211.081. Preliminary inquiry as to institution of proceedings

Whenever any person informs the court in person and in writing that a child appears to be within the purview of applicable provisions of section 211.031, the court shall make or cause to be made a preliminary inquiry to determine the facts and to determine whether or not the interests of the public or of the child require that further action be taken. On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition or may authorize the filing of a petition by the juvenile officer.

211.181. Order for disposition or treatment of child within jurisdiction

When a child is found by the court to come within the applicable provisions of section 211.031, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child and the court may, by order duly entered, proceed as follows:

(1) Place the child under supervision in his own home or in custody of a relative or other suitable person upon such conditions as the court may require;

(2) Commit the child to the custody of:

(a) A public agency or institution authorized by law to care for children or to place them in family homes;

(b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes;

(c) An association, school or institution willing to receive it in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured;

(d) The juvenile officer; or

(3) Place the child in a family home;

(4) Cause the child to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child requires it, cause the child to be placed in a public or private hospital, clinic or institution for treatment and care, except that nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric treatment of a child whose parents or guardian in good faith are providing other remedial treatment recognized or permitted under the laws of this state.

(5) Suspend or revoke a state or local license or authority of a child to operate a motor vehicle.

211.241. Court orders to parents for support of children, procedure--county to support, when

1. When the juvenile court finds a child to be within the purview of applicable provisions of section 211.031 it may in the same or subsequent proceedings, either on its own motion or upon the application of any person, institution or agency having the custody of such child, proceed to inquire into the ability of the parent of the child to support it or to contribute to its support. If the parent does not voluntarily appear for the proceeding, he shall be summoned in the same manner as in civil cases and the summons in the case may issue to any county of the state.

2. If the court finds that the parent is able to support the child or to contribute to its support, the court may enter

an order requiring the parent to support the child or to contribute to its support and to pay the costs of collecting the judgement.

3. The court may enforce the order by execution and the execution may issue on request of the juvenile officer or any person, agency or institution which has been awarded custody of the child. No deposit or bond for costs shall be required as a condition for the issuance or service of the execution. No property is exempt from execution upon a judgement or decree made under this section, and all wages or other sums due the parent is subject to garnishment or execution in any proceedings under this section.

4. Otherwise the necessary support of the child shall, unless the court commits the child to a person or institution willing to receive it without charge, be paid out of the funds of the county but only upon approval of the judge of the juvenile court.

211.441. Court may terminate rights, when--consent, how established.

1. The juvenile court may, upon petition filed as provided in other cases of children coming under the jurisdiction of the court, terminate all rights of parents to a child when it finds that such termination is in the best interest of the child and one or more of the following conditions are found to exist:

(1) When the parents have consented in writing to the termination of their parental rights.

(2) When it appears by clear, cogent and convincing evidence that for one year or more immediately prior to the filing of the petition

(a) The parents have abandoned the child;

(b) The parents have willfully, substantially and continuously or repeatedly neglected the child and refused to give the child necessary care and protection;

(c) The parents, being financially able, have willfully neglected to provide the child with the necessary subsistence, education or other care necessary for his health, morals or welfare or have neglected to pay for such subsistence, education or other care when legal custody of the child is lodged with others;

(d) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the child;

(e) The parents have been found incompetent under chapter 475, RSMo, and are incapable, and there are reasonable grounds to believe that they will continue to be incapable of giving the child necessary care and protection.

2. The written consent as provided in subdivision (1) of subsection 1 may be executed prior to or subsequent to the institution of the proceedings and shall be acknowledged as conveyances of real estate are required to be acknowledged under the laws of this state, or, in lieu of such acknowledgement, the signature of the person giving the written consent shall be witnessed by at least two adult persons whose signatures and addresses shall be plainly written thereon.

The Missouri statutes on child abandonment and mistreatment of children are as follows:

559.330. Abandonment of child

If any father or mother of any child under the age of six years, or any other person to whom such child shall have been confided, shall expose such child

in a street, field, or other place, with intent wholly to abandon it, he or she shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding five years or in the county jail not less than six monts. This section shall apply without regard to whether the child was born in lawful wedlock.

559.340. Mistreatment of children--penalty

If any mother or father of any infant child under the age of sixteen years, whether such child was born in lawful wedlock or not, or any person who has adopted any such infant, or any other person having the care and control of any such infant, shall unlawfully and purposely assault, beat, wound or injure such infant, whereby its life shall be endangered or its person or health shall have been or shall be likely to be injured, the person so offending shall, upon conviction, be punished by imprisonment in the penitentiary not exceeding three years, or by imprisonment in the county jail not exceeding one year, or by fine not exceeding one thousand dollars or by both such fine and imprisonment.

The following sections of the Missouri law also provide penalties for child neglect.

559.353. Nonsupport of wife or child

Any man who, without good cause, fails, neglects or refuses to provide adequate food, clothing, lodging, or medical or surgical attention for his wife; or any man or woman who, without good cause, abandons or deserts or, without good cause, fails, neglects or refuses to provide adequate food, clothing, lodging, or medical or surgical attention for his child born in or out of wedlock, under the age of sixteen years, or if any person, not the father or mother, having the legal care or custody of such minor child, without good cause, fails, refuses or neglects to provide adequate food, clothing, lodging, or medical or surgical attention for the child, whether or not in either such case the child by reason of such failure, neglect or refusal actually suffers physical or material want or destitution, is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

559.356. Nonsupport of child in state by man in other state

Any man who leaves the state of Missouri and takes up his abode in some other state and leaves his child under the age of sixteen years in the state of Missouri, and, without just cause or excuse, fails, neglects or refuses to provide his child with adequate food, clothing, lodging, or medical or surgical attention shall be guilty of a felony and upon conviction thereof shall be imprisoned by the department of corrections for a term of two years. It shall be no defense to such charge that some person or organization other than the defendant has furnished food, clothing, lodging, medical or surgical attention for said child or children, nor shall this statute be construed so as to relieve said person from the criminal liability defined herein for such omission merely because the mother of such child or children, in case of the father, is legally entitled to the custody of such child or children, nor because the mother of such child or children, or any other person or organization, voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical or surgical attention, or undertakes to do so.

559.360. Contributing to delinquency of child--penalty--suspended sentence, when

1. Any person who encourages, aids or causes a child under seventeen years of age to commit any act or engage in any conduct which would be injurious to the child's morals or health or who commits any act or omits the performance of any duty which contributes to, causes or tends to cause a child under the age of seventeen years to come within the provisions of subdivisions (1) or (2) of section 211.031, RSMo, is guilty of a misdemeanor and upon conviction shall be punished by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred dollars or by both such fine and imprisonment.

2. The court may impose conditions upon a person found guilty under this section and so long as such person complies to the satisfaction of the court, the sentence imposed may be suspended.

New York. In New York, the Social Services Law §371 (McKinney Supp. 1973) has been recently amended to read as follows:

> 371. Definitions
>
> Unless the context or the subject matter manifestly requires a different interpretation, when used in this article or in any special act relating to children,
>
> 1. "Child" means a person actually or apparently under the age of sixteen years;
>
> 2. "Abandoned child" means a child who is abandoned or deserted in any place by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, and left
> (a) in destitute circumstances, or
> (b) without proper food, shelter or clothing, or
> (c) without being visited or having payments made toward his support, for a period of at least six months, by his parent, guardian or other lawful custodian without good reason;
>
> 3. "Destitute child" means a child who, through no neglect on the part of its parent, guardian or custodian, is
> (a) destitute or homeless, or
> (b) in a state of want or suffering due to lack of sufficient food, clothing, or shelter, or medical or surgical care;
>
> 4-a. "Neglected child" means a child less than eighteen years of age
> (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care
>
> (A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
>
> (B) in providing the child with proper supervision or guardianship, by unreasonably inflicting

or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by using a drug or drugs; or by using alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

4-b. "Abused child" means a child less than sixteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed an act of sexual abuse against such child as defined in the penal law.

The New York reporting law for cases of child abuse is given below as it is contained in the Social Services Law §383 (McKinney Supp. 1973):

§383-a. Reports of injury, abuse or maltreatment of children under sixteen years of age

1. a. Any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse, hospital personnel engaged in the admission, examination, care or treatment of

persons or Christian Science practitioner having reasonable cause to suspect that a child under the age of sixteen years, brought to him or coming before him for admission, examination, care or treatment, has had serious physical injury inflicted upon him by other than accidental means, or whose condition gives indication of other serious abuse or maltreatment, shall report or cause reports to be made in accordance with the provisions of this section and may, at the time of the initial examination or as soon as practicable thereafter, take or arrange to have taken photographs of the areas of trauma visible on a child who is the subject of the report; provided, that where said physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, registered nurse, resident, intern or such hospital personnel attends such child in his capacity as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution, or his designee, who shall report or cause reports to be made in accordance with this section.

b. The person in charge of any hospital or similar institution may, where he believes the facts so warrant, retain custody of the child who is the subject of the report, until the next regular week day session of that part of the family court in which a child protective proceeding pursuant to article ten of the family court act may be commenced, whether or not additional medical treatment is required during that period and whether or not a request is made by a parent or guardian for the return of the child during that period.

1-a. Any social services worker, school official, day care center director or peace officer having reasonable cause to suspect that a child under the age of sixteen years has had serious physical injury inflicted upon him by other than accidental means, or whose condition gives indication of other serious abuse or maltreatment, shall report or cause reports to be made in accordance with the provisions of this section.

1-b. Any report filed pursuant to this section shall be admissable in evidence in any proceedings relating to child abuse.

2. An oral report shall be made as soon as practicable by telephone, to be followed within forty-eight hours by a report in writing, to the social services official of the city or county in which the person reporting maintains his place of business or is employed. Such reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the nature and extent of the child's injuries, abuse or maltreatment, including any evidence of prior injuries, abuse or maltreatment; and any other information which the person reporting believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor. The social services official shall maintain and keep up-to-date a central register of all cases reported under this section together with the final disposition thereof. The social services official shall submit to the department in the manner described and on forms furnished by the department such information as shall be necessary in order for the department to maintain a statewide central register of all reports made in the state.

An additional copy of each such report shall be forwarded by the social services commissioner to the society for the prevention of cruelty to children or other duly authorized child protective agency in his respective city or county if a prior request for such copies has been made to such official in writing by the society or agency.

3. The social services official shall investigate or cause to have investigated the cases of injury, abuse or maltreatment reported under this section and shall offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible and shall, in all cases where the person in charge of a hospital or similar institution has retained custody of a child pursuant to paragraph b of subdivision one of this section, commence a proceeding for abuse or neglect pursuant to article ten of the family court act at the next regular week day session of the appropriate part of said court, or recommend to the court at that time that the child be returned to his parents or guardian.

4. Any person or institution participating in good faith in the making of a report or the taking or arranging to have taken photographs pursuant to this section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as the result of the making such report or the taking of such photographs.

5. Neither the physician-patient privilege, as set forth in section forty-five hundred four of the civil practice law and rules, nor the privilege attaching to confidential communications between husband and wife, as set forth in section forty-five hundred two of the civil practice law and rules, shall be a ground for excluding evidence regarding a child's injuries, abuse or maltreatment, or the cause thereof, in any judicial proceeding resulting from a report pursuant to this section.

6. The department may adopt regulations to implement this section.

§ 383-b. Medical treatment for abused children; consent of commissioners

The local commissioner of social services or the commissioner of health may give effective consent for medical, dental, health and hospital services for any abused child under the age of sixteen years.

§ 383-c. Temporary detention of an abused child

Any physician teating an abused child under sixteen years shall have the right to keep such child in his custody until such time as the custody of the child has been transferred to the appropriate police authorities or the social services official of the city or county in which the physician maintains his place of business. If the social services official receives custody of a child pursuant to the provisions of this section, he shall promptly inform the parent or other person responsible for such child's care and the family court of his action.

According to the Social Services Law, §397-398 (McKinney Supp. 1973), the public welfare officials of New York have the following powers and duties, among others:

> §397. Powers and duties of public welfare officials in relation to children
>
> All public welfare officials responsible for the administration of home relief to families shall, in relation to all children in such families other than delinquent children, persons in need of supervision, defective children, physically handicapped children and children born out of wedlock who shall be cared for under the provisions of the following section, have powers and perform duties as follows:
>
> . . . . . .
>
> 2. As to neglected and abused children:
>
> (a) Investigate complaints of neglect and abuse of children and offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stablize family life wherever possible.
>
> (b) Bring such case when necessary before the family court for adjudication.
>
> (c) Institute proceedings in a court of competent jurisdiction against a parent or adult for neglect or abuse of a child.
>
> 3. Provide any necessary medical or hospital care for such children when responsible for the provision of such care under section sixty-nine.
>
> 4. The provisions of this section shall not be deemed to confer on public welfare officials responsible only for the authorization of home relief or of home relief and hospital care, any powers and duties in relation to destitute and neglected children except as follows:
>
> . . . . . .
>
> (b) As to neglected and abused children:

Report to the county commissioner any complaint they may receive of neglect and abuse of children.

(c) Provide any necessary medical care or hospital care for such children when responsible for the provision of such care under section sixty-nine.

§ 398. Additional powers and duties of commissioners of public welfare and certain city public welfare officers in relation to children.

Commissioners of public welfare and city public welfare officers responsible under the provisions of a special or local law for the children hereinafter specified shall have powers and perform duties as follows:

. . . . . .

2. As to neglected, abused or abandoned children:

(a) Investigate the alleged neglect, abuse or abandonment of a child, offer protective social services to prevent injury to the child, to safeguard his welfare, and to preserve and stabilize family life wherever possible and, if necessary, bring the case before the family court for adjudication and care for the child until the court acts in the matter.

(b) Receive and care for any child alleged to be neglected, abused or abandoned who is temporarily placed in his care by the family court pending adjudication by such court of the alleged neglect, abuse or abandonment; and receive and care for any neglected, abused or abandoned child placed or discharged to his care by the family court.

(c) Report to the local registrar of vital statistics of the district in which the child was found the sex, color, approximate date of birth, place of finding, and the name assigned to any child who may be found whose parents are unknown, within ten days whenever possible after the child is found, on a form prescribed therefor by the state commissioner of health, and report the subsequent identification of any such child to the state commissioner of health;

provided, however, that in the city of New York such form shall be prescribed by, and such report shall be made to the health services administration.

. . . . . .

6. As to all foregoing classes of children:

(a) Investigate the family circumstances of each child reported to him as destitute, neglected, abused, delinquent, defective or physically handicapped in order to determine what assistance and care, supervision or treatment, if any, such child requires.

(b) Provide for expert mental and physical examination of any child whom he has reason to suspect of mental or physical defect or disease and pay for such examination from public funds, if necessary.

(c) Provide necessary medical or surgical care in a suitable hospital, sanatorium, preventorium or other institution or in his own home for any child needing such care and pay for such care from public funds, if necessary. However, in the case of a child or minor who is eligible to receive care as medical assistance for needy persons pursuant to title eleven of article five of this chapter, such care shall be provided pursuant to the provisions of that title.

(d) Ascertain the financial ability of the parents of children who become public charges and collect toward the expense of such child's care such sum as the parents are able to pay.

(e) Collect from parents whose children have been discharged to his care by the family court such sums as they are ordered to pay for the maintenance of such children and report any failure to comply with such order to such court.

(f) When in his judgement it is advisable for the welfare of the child, accept the surrender of a child by an instrument in writing in accordance with the provisions of this chapter. Any inconsistent provision of law notwithstanding,

the acceptance by the social services official of an absolute surrender of a child born out of wedlock from the mother of such child shall relieve her from any and all liability for the support of such child.

(g) Place children in suitable instances in family homes, agency boarding homes or group homes or institutions under the proper safeguards, either directly or through authorized agencies, except that, direct placements in agency boarding homes or group homes may be made by the public welfare official only if the board shall have authorized him to operate such homes in accordance with the provisions of section three hundred seventy-four-b of this chapter and only if suitable care is not otherwise available through an authorized agency under the control of persons of the same religious faith as the child. Placements shall be made only in institutions located in an adjoining state as are maintained by a corporation organized under the laws of this state and having authority to maintain an institution for the care of children. However, all placements shall be made in institutions visited, inspected and supervised by the board and conducted in conformity with the rules of such board.

(h) Supervise children who have been cared for away from their families until such children become twenty-one years of age or until they are discharged to their own parents, relatives within the third degree or guardians, or adopted.

(i) Provide care in an institution, agency boarding home, or family free or boarding home for any destitute minor between sixteen and eighteen years of age who cannot be properly cared for in his own home, either directly or through authorized agencies, except that, direct placements in agency boarding homes may be made by the public welfare official only if the board shall have authorized him to operate such homes in accordance with the provisions of section three hundred seventy-four-b of this chapter and only if suitable care is not otherwise available through an authorized agency under the control of persons of the same religious faith as the child. Such care may be continued after the eighteenth birthday of the minor and until he is discharged from care or becomes twenty-one years of age.

(j) Permit children and minors who are being cared for away from their own homes as public charges to retain up to fifty dollars per month of their earned income for future identifiable needs in accordance with the regulations of the department.

(k) In accordance with regulations of the department, make such payments for the care and support of a child or minor who has been placed out for adoption or who has been adopted, as in his judgment are necessary for the welfare of such child or minor. With respect to a child with such special, unusual or significant physical or emotional handicaps as to be an obstacle to his adoption, such payments may include payments for medical , surgical, psychiartic [sic] and other special costs, services and devices.

(l) In accordance with regulations of the department, provide suitable vocational training through any institution licensed or approved by the state education department, for any minor in his care who demonstrates to his satisfaction the possession of talent, aptitude and ability necessary to benefit therefrom, provided such minor could not otherwise obtain such training. Expenditures may be made for tuition, books, supplies, and all other necessary items to enable such minor to obtain such training.

(m) In accordance with regulations of the department, provide maintenance in a summer camp for children and minors who are being cared for away from their own homes as public chrages, when in his judgment it is advisable for the welfare of such children and minors.

(n) In accordance with the regulations of the department, and only if and so long as the director of the division of the budget certified that federal aid is available therefor, is authorized to provide intensive family casework services to prevent the placement of children in foster care. Such services may be provided directly or with the approval of the state commissioner of social services through purchase from an authorized agency as defined in this chapter; however, each local social services commissioner shall, prior to providing such intensive family casework services, make findings that the children will be placed in a foster care home unless intensive

family casework services are provided and that it is reasonable to believe that by providing intensive family casework services the child will be able to remain with his family.

. . . . . .

8. A public welfare official who is authorized to place children or minors in homes or institutions pursuant to provisions of this section shall have the power to place children or minors in a public institution for children.

9. A social services official shall have the same authority as a peace officer to remove a child from his home without an order of the family court and without the consent of the parent or person responsible for such child's care if the child is in such condition that his continuing in the home presents an imminent danger to the child's life or health. When a child is removed from his home pursuant to the provisions of this subdivision, the social services official shall promptly inform the parent or person responsible for such child's care and the family court of his action.

The New York Penal Law § 260.10 (McKinney Supp. 1973) provides a penalty for endangering the welfare of a child.

§ 260.10 Endangering the welfare of a child

A person is guilty of endangering the welfare of a child when:

1. He knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a male child less than sixteen years old or a female child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an "abused child," a "neglected child," a "juvenile delinquent" or a "person in need of

supervision," as those terms are defined in articles ten and seven of the family court act.

Endangering the welfare of a child is a class A misdemeanor.

Tennessee. In Tennessee, a "child" is defined by the Tennessee Code Annotated § 37-202 (Supp. 1972) as "a person less than eighteen (18) years of age and no exception shall be made for a child who may be emancipated by marriage or otherwise." This same section contains the definitions of "dependent and neglected child" and "abandoned child" as follows:

(6) "Dependent and neglected child" means a child

(i) who is without proper guardianship;

(ii) whose parent, guardian, or person with whom the child lives, by reason of cruelty, mental incapacity, immorality, or depravity is unfit to properly care for such child;

(iii) who is under unlawful or improper care, supervision, custody or restraint by any person, corporation, agency, association, institution, society or other organization or who is unlawfully kept out of school;

(iv) whose parent, guardian or custodian neglects or refuses to provide necessary medical, surgical, institutional or hospital care for such child;

(v) who because of lack of proper supervision, is found in any place the existence of which is in violation of law; or

(vi) who is in such condition of want or suffering or is under such improper guardianship or control as to injure or endanger the morals, or health of himself or others.

(7) "Abandoned child" means a child whose parents or other persons lawfully charged with his care and custody willfully fail to visit or willfully fail to

> support or make payments toward his support for a period of four (4) consecutive months.

The next section of the Code defines the jurisdiction of the juvenile courts.

> 37-203. Jurisdiction.--(a) The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this chapter:
>
> (1) Proceedings in which a child is alleged to be delinquent, unruly, or dependent and neglected, or to have committed a juvenile traffic offense as defined in § 37-245.
>
> (2) All cases to terminate parental rights when a child is found to have been abandoned for four (4) consecutive months immediately preceding institution of an action or proceeding to declare the child to be an abandoned child, except that this does not deprive circuit and chancery courts of the right to adjudicate an abandonment where abandonment has been alleged in a petition to adopt as is provided in chapter 1 of title 36.
>
> . . . . . .
>
> (c) When jurisdiction has been acquired under the provisions of this chapter, except as provided in §§ 37-236 and 37-237, such jurisdiction shall continue for the purposes of this chapter until the child shall have attained his majority. Whenever a child is adjudged a dependent and neglected, or an abandoned, or unruly or a delinquent child under the provisions of this chapter, the court may in its discretion retain jurisdiction and control of such child, in accordance with the provisions of this chapter, until he or she shall have reached the age of twenty-one (21) years.

If a child is found by the juvenile court to be neglected, the Code outlines the following steps that may be taken:

37-230. Dependent or neglected child--Disposition.--(a) If the child is found to be dependent or neglected, the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

(1) permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes including supervision as directed by the court for the protection of the child;

(2) subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(ii) the state department of welfare;

(iii) an agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

(iv) an individual in another state with or without supervision by an appropriate officer under § 37-241; or

(3) without making any of the foregoing orders transfer custody of the child to the juvenile court of another state if authorized by and in accordance with § 37-240 if the child is or is about to become a resident of that state.

(b) Unless a child found to be dependent or neglected is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

The penalties for contributing to the neglect of a child are given in the following section of the Tennessee Code.

> 37-255. Contributing to dependency--Penalties--Jurisdiction of court.--When any child shall be declared to be a dependent and neglected child, the parent, guardian, or other person who shall by any willful act cause, contribute to or encourage such dependency and neglect shall be guilty of a misdemeanor triable in the circuit or criminal court and shall be fined not more than fifty dollars ($50.00), or imprisoned for not more than eleven (11) months and twenty-nine (29) days, or shall be punished by both such fine and imprisonment. In such a case when the defendant pleads not guilty, the juvenile court judge shall have the power to bind the defendant over to the grand jury as in cases of misdemeanors under the criminal laws of this state. In such case when the defendant pleads not guilty the juvenile court judge shall have the power to bind the defendant over to the grand jury or to proceed to hear the case on its merits without the intervention of a jury if the defendant requests the hearing in juvenile court and expressly waives in writing an indictment, presentment, grand jury investigation and jury trial. In the event the defendant enters a plea of guilty the juvenile court judge has the same power as the circuit or criminal court in making final disposition of the case. Reliance by a parent, guardian, or custodian upon remedial treatment other than medical or surgical treatment for a child, when such treatment is legally recognized or legally permitted under the laws of this state, shall not subject such parent, guardian, or custodian to any of the penalties hereunder.

The sections of the Tennessee Code dealing with child abuse and reporting are given below:

37-1201. Mistreatment or neglect of children--Power of juvenile court--Penalty on guilty plea.--It shall be a misdemeanor for any person maliciously, purposely, or knowingly, other than by accidental means, to treat a child under sixteen (16) years of age in such a manner as to inflict injury or to neglect such child as to adversely affect its health and welfare.

Any juvenile court having reasonable cause to believe that any person is guilty of violating this section shall cause such person to be brought before the court either by summons or warrant. In such a case, when the defendant pleads not guilty, the juvenile court judge shall have the power of a justice of the peace to bind the defendant over to the grand jury as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the defendant may be prosecuted on an indictment filed by the district attorney-general and it shall be unnecessary that a prosecutor by named on the indictment. On a plea of not guilty the juvenile court judge shall have the power to proceed to hear a case on its merits without the intervention of a jury if the defendant requests the hearing in juvenile court and expressly waives in writing an indictment, presentment, grand jury investigation and jury trial. In the event the defendant enters a plea of guilty, the juvenile court judge shall have the power to fine the defendant not more than one thousand dollars ($1,000) and to imprison him for not more than eleven (11) months and twenty-nine (29) days.

37-1202. Duty to report injured child--Contents of report.--Any person having knowledge of or called upon to render aid to any child under the age of sixteen (16) years, or reasonably presumed to be under the age of sixteen (16) years, who is suffering from or has sustained any wound, injury, disability or condition of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect, shall be required to report same immediately by telephone or otherwise to the judge having juvenile jurisdiction in the county where the child resides.

Said report shall contain, if available to informant, the name and address of the child; its age or approximate age; the nature and extent of the injuries, neglect or condition, including any evidence of previous injury or nelgect; any other information that may be helpful in establishing the cause of the injury, neglect or condition, and the identity of the one probably causing same.

37-1203. Violation of duty to report injuries--Power of juvenile court--Penalty on guilty plea.--Any juvenile court having reasonable cause to believe that any person is guilty of violating §37-1202 shall cause such persons to be brought before the court either by summons or warrant. In such a case, when the defendant pleads not guilty, the juvenile court judge shall have the power of a justice of the peace to bind the defendant over to the grand jury as in cases of misdemeanors under the criminal laws of this state. In the event the defendant enters a plea of guilty, the juvenile court judge shall have the power to fine the defendant not more than fifty dollars ($50.00) or to imprison him for not more than three (3) months, or to assess both fine and imprisonment.

37-1204. Reference of reported injuries to welfare department--Investigation and report.--All cases reported under the provisions of § 37-1202 shall be referred immediately by the juvenile court judge to the local county director of the Tennessee department of public welfare. The local director of the department of public welfare shall make an investigation and report its findings to the juvenile court judge without delay.

37-1205. Care of injured child--Protective custody of juvenile court.--When the juvenile court judge receives information that indicates that the child is in need of immediate care and protection, the child shall be brought forthwith into the protective custody of the juvenile court.

> 37-1206. Report of child injury confidential.--The report shall be confidential except when in the discretion of the court the testimony of the informant is considered material to an indictment and/or conviction. The informant shall be presumed to be acting in good faith and shall thereby be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.
>
> 37-1207. Provisions of chapter supplementary.--Except as expressly herein provided, the provisions of this chapter shall not be construed as repealing any provisions of any other statute but shall be supplementary thereto and cumulative thereof.

Penalties for non-support or abandonment of a child are given in §39-202 and § 39-217 of the Tennessee Code Annotated (Supp. 1972).

> 39.202. Failure to provide for child a misdemeanor.--It shall be a misdemeanor for any person legally chargeable with the care or support of a child under the age of eighteen (18) years to willfully and without good cause neglect or fail to provide for such child according to his or her means, or to leave it destitute, or in danger of becoming a public charge. There shall be a presumption, rebuttable in character, that the person so charged is possessed of means adequate to such support.
>
> 39-217. Leaving state after abandonment of child--Penalty.--Any person legally chargeable with the care of a child under the age of eighteen (18) years, who shall willfully leave the state of Tennessee, after abandoning such child and with intent to leave it destitute or liable to become a public charge, shall be guilty of a felony and, upon conviction, punishable by a fine not to exceed five hundred dollars ($500) or imprisonment in the penitentiary for a period of from one (1) to three (3) years or both, in the discretion of the jury.

Case Law

Early developments. Under the early English common law, the father was entitled to the custody of his children as a matter of legal right. His right to custody was considered absolute in some instances, regardless of the welfare of the child. Under the common law as it developed in the colonies, the father had a right to custody that was considered interrelated with his duty to provide support, his obligation to discipline, and his right to the child's services. The father's right to custody was not absolute, but it was considered superior to the custody rights of the mother. On the father's death his rights passed to her. (8)

Perhaps the earliest recorded child-abuse case was decided in Massachusetts in 1655. It involved a master's maltreatment of an apprentice named John Walker, age 12, who died as a result. The master was convicted of manslaughter and ordered burned in the hand, and all of his goods were confiscated. (9)

Few cases decided before the eighteenth century dealt with the civil and criminal liability of parents who were too harsh in disciplining their children. The courts developed the general rule that a parent could not be held liable in a civil suit for excessive or brutal punishment of his children. The courts reasoned

that an orderly society depended on parents having discretion in disciplining within the home in order to maintain domestic harmony and family government. (10)

In an 1891 Mississippi case, the court said: "The state, through its criminal laws, will give the minor child protection from parental violence and wrongdoing, and this is all the child can be heard to demand." (11)

A leading criminal case of the mid-nineteenth century arose in Tennessee, where a child's parents were prosecuted for excessive punishment. (12) The evidence showed that the mother had struck the child with her fists and had pushed her head against a wall. Further, the parents had whipped her with a cowskin, tied her to a bedpost with a rope for two hours, and switched her. The court reversed the parents' conviction, holding that whether the punishment was excessive was a question of fact for the jury to decide rather than a question of law.

The legislation that created the Chicago Reform School authorized justices of the peace to commit a child who is "destitute of proper parental care, or is growing up in mendicancy, ignorance, idleness or vice." The broad commitment authority was challenged in a case involving Daniel O'Connell, age fourteen, who was committed to the Reform School in 1870. (13)

The court concluded that he had been committed under the general statutory authority to arrest and confine for "misfortune." The court ordered his release on the grounds that commitment of a poor or neglected child who had committed no crime violated his constitutional rights.

Mississippi. There have been a number of cases in Mississippi over the years dealing with some aspect of child abuse and neglect. In many instances, these have to do with the custody and care of a neglected child.

However, at least one case has dealt with a "battered child." In Lee v. State in Interest of Lee, 210 So 2d 878, the Chancery Court had affirmed a youth court order. This order had adjudged an infant to be a neglected and battered child. Accordingly, the court withdrew the custody of the child from both its parents and awarded custody to the county welfare department. However, a higher court held that this must be reversed, as the child's father, who was absent from the United States at the time the alleged neglect and battery took place, had consistently provided for the support of his wife and child during his absence. The child's custody was awarded to the father.

In Walker v. State, 238 M 532, 119 So 2d 277, it was held that a child could be considered "neglected" in

an instance where a minor, whose mother was dead and whose father did odd jobs in various cities throughout the state, resided with a paternal aunt and was left uncared for at night while the aunt was working.

In Page v. State, 160 M 300, 133 So 216., the court held that for neglect or refusal to provide for support and maintenance of children to constitute a criminal offense, it must be willful. "Willful" nelgect or refusal to support children means neglect or refusal with stubborn purpose and without justifiable excuse.

A father had deposited in a bank to the credit of two children under 16 approximately $500, which was available to them. In Ladner v. State, 165 M 140, 146 So 888, it was held that he could not be convicted for neglecting to provide for their support.

In Archer v. State, 214 M 742, 59 So 2d 339., the proof showed that a group of children were being cared for by their neighbors and church organization and the county welfare department. These facts did not preclude the prosecution of the father.

In a prosecution under the Mississippi law, there is a presumption of innocence, and guilt must be proved beyond a reasonable doubt, according to the court in Gladney v. State, 246 M 584, 151 So 2d 606. Similarly, the burden of proving that willful neglect or refusal to support children is upon the state. The burden is not

on the accused to prove that his action was excusable or justifiable in such neglect or refusal, according to Williams v. State, 207 M 816, 43 So 2d 389.

Elsewhere. In a recent California case, People v. Jackson 95 Cal. Rptr. 919, 18 C.A. 3d 504., there was a prosecution for child beating. A doctor, who had examined the child, testified that the "battered child syndrome" was present. It was held by the court that this was not an improper invasion of the province of the jury. In another California case, a defendant was found not guilty after he was accused of willfully causing a child to be placed in a situation in which its health or safety was endangered on the basis that he allowed the child to remain alone in a room with him, and in an epileptic seizure, struck the child. People v. Schneider 86 Cal. Rptr. 313, 6 C.A. 3d 983.

In a Missouri case, State v. Black, 360 Mo. 261, 227 S.W. 2d 1006, it was held that when the accused slapped his daughter on the face, the punishment was not corrective but excessive and therefore unlawful. When the daughter died from this act, it constituted manslaughter. The court held that a parent has the right to administer proper and reasonable chastisement of a child without being guilty of assault and battery. However, if he administers unreasonable chastisement his act becomes unlawful, and, where the punishment inflicted by a parent

on a child is so excessive and cruel as to show that the parent was not acting in good faith for the child's benefit, the parent is guilty of an unlawful assault. Further, whether a parent's punishment of a child is moderate or so excessive as to be unlawful depends on the age, sex, condition and disposition of the child with all the surrounding circumstances.

In a New York case, the physician and the social worker believed that the child's injury had been inflicted by the parents, but there were no eyewitnesses who could so testify. The court therefore took judicial notice of studies of the "battered child syndrome" and stated:

> In this. . .proceeding affecting a battered child syndrome, I am borrowing from the evidentiary law of negligence the principlae of "res ipsa loquitur" and accepting the proposition that the condition of the child speaks for itself, thus permitting an inference of neglect to be drawn from proof of the child's age and condition, and that the latter is such as in the ordinary course of things does not happen if the parent who has responsibility and control of an infant is protective and non-abusive. . . .(7)

The application of the doctrine of res ipsa loquitur in the above case thus allowed the court to overcome the hurdle of proving a direct causal relationship between the injuries sustained and the parent's acts.

In a Missouri case, Morrison v. State 252 S.W. 2d 97 (1953), an infant child was afflicted with

erythroblastic anemia and competent medical opinion was that the child would die if it were not given a blood transfusion. The father of the child refused to permit a transfusion on religious grounds. The court held that the state had the power to have the child declared a dependent child in order to save its life and health.

In another Missouri case, State v. Pogue 282 S.W. 2d 582 (1955), it was held that the parents as natural guardians of their minor children, were presumed, in the absence of proof to the contrary, to be fit and qualified to exercise that natural privilege. Where the parents were able to care for their children, fond grandparents had no legal right to continue custody of the children, regardless of the willingness and ability of the grandparents to rear the children. Further, the welfare of the children was the paramount consideration to which all others were required to yield, and the question of welfare of the children was not to be determined on mere financial considerations.

In the same state, in In re J, 356 S.W. 2d 508 (1962), the court held that the best interests of a 14 1/2 year old daughter, whose mother was carrying on "an association" with a married man and neglecting the training of the child, warranted placing the child in the custody of her maternal grandmother.

According to a New York court, "neglect of children" means more than a failure to provide children with the "necessaries of life." It embraces a failure to provide children with spiritual guidance or with inculcation of a moral sense or such conduct by parents as would cause children because of a rejection to engage in delinquent conduct. In re O'Donnell, 61 N.Y.S. 2d 822.

In Missouri, "neglect" of a child is the intentional, deliberate and unjustifiable failure to perform the duty with which a parent is charged by law according to acceptable community standards. C.S. v. Smith, 483, S.W. 2d 790 (1972). According to S.K.L. v. Smith 480 S.W. 2d 119 (1972), "neglect" of a child is the failure to perform the duty with which a parent is charged by law and by concience..

Proposed Model Legislation

As a statement of the principles that should be incorporated into any legislation affecting children, the following "Bill of Rights for Children" is presented:

A Bill of Rights for Children

A child has a moral right and should have a legal right:

1. To receive parental love and affection, discipline and guidance, and to grow to maturity in a home environment which enables him to develop into a mature and responsible adult;

2. To be supported, maintained, and educated to the best of parental ability, in return for which he has the moral duty to honor his father and mother;

3. To be regarded as a person, within the family, at school, and before the law;

4. To receive fair treatment from all in authority;

5. To be heard and listended to;

6. To earn and keep his own earnings;

7. To seek and obtain medical care and treatment and conseling;

8. To emancipation from the parent-child relationship when that relationship has broken down and the child has left home due to abuse, neglect, serious family conflict, or other sufficient cause, and his best interests would be served by the termination of parental authority;

9. To be free of legal disabilities or incapacities save where such are convincingly shown to be necessary and protective of the actual best interests of the child; and

10. To receive special care, consideration, and protection in the administration of law or justice so that his best interests always are a paramount factor. (15)

A few years ago, Hensen wrote on "Suggested Guidelines for Child Abuse Laws." (16) In his article, he proposed that the judge before whom a child abuse case is brought should have the power to direct studies of the child and his family (the first time that an abuse of the child is reported) to determine if the child is or can be properly cared for by his family. Further, since

abused children usually do not live to be brought to court a third time, the parents should be presumed unfit on the second report of abuse to the child. Appropriate measures could then be taken to find fit custodians for the child unless the parents overcome this presumption. (17)

In the early 1960's several model laws dealing with child abuse were presented. (18)(19) In general, these model laws included: (a) the purpose of the act (to protect the health and welfare of physically abused children and to prevent further abuse by having health professions personnel report to a police authority and causing state protective services to be implemented); (b) reports by physicians and institutions (required when injuries do not appear to be caused accidentally); (c) nature and content of report and to whom made (oral report to be made immediately and written report to follow); (d) immunity from civil or criminal liability for reporting; (e) evidence not be excluded (due to a physician-patient or husband-wife privilege); and (f) penalty (a misdemeanor) for a knowing and willful violation of failure to report.

Suggested legislation on reporting of child abuse. To illustrate, one of these model laws--that of the Council of State Governments in 1965--is given below.

[Title should conform to state requirements. The following is a suggestion: "An act for the mandatory reporting by medical personnel and institutions of certain physical abuse of children."]

(Be it enacted, etc.)

Section 1. Declaration of Policy. It is the policy of this state to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances may be further threatened by the conduct of those responsible for their care and protection.

Section 2. Reports. Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of [eighteen], and every registered nurse, examining, attending or treating such a child in the absence of a physician or surgeon, and having reason to believe that such child has had serious injury or injuries inflicted upon him or her as a result of abuse or neglect, shall report the matter promptly to [a duly authorized society for the prevention of cruelty to children or other duly authorized child protective agency], (20) to a public child protective agency, to a public welfare official having responsibility for the enforcement of laws for the protection of children, or to the police; provided that when attendance with respect to a child is pursuant to the performance of services as a member of the staff of a hospital or similar institution, such staff member shall immediately notify the superintendent, manager, or other person in charge of the institution who shall make the report forthwith. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as soon as may be after it is initially made by telephone or otherwise and shall

contain the names and addresses of the child and his or her parents or other persons responsible for his or her care, if known, the child's age, the nature and extent of the child's injuries [including any evidence of previous injuries], and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor.

Section 3. Immunity From Liability. Anyone participating [in good faith] (without malice] in the making of a report pursuant to this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceeding resulting from such report.

Section 4. Admissibility of Evidence. In any proceeding resulting from a report made pursuant to this act or in any proceeding where such a report or any contents thereof are sought to be introduced in evidence, such report or contents or any other fact or facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

Section 5. Penalty for Violation. Anyone knowingly and willfully violating the provisions of this act shall be guilty of a misdemeanor.

Section 6. Effective Date. (Insert effective date). (21)

Suggested legislation on locating deserting parents.

The Council of State Governments has also recommended legislation authorizing welfare departments or other

similar agencies to request information from other agencies concerning the whereabouts of parents and other persons liable for support of dependents. The suggested legislation reads as follows:

> [Title should conform to state requirements. The following is a suggestion: "An act concerning services for locating deserting parents and other persons liable for support of dependents."]
>
> (Be it enacted, etc.)
>
> Section 1. To assist in locating parents who have deserted their children and other persons liable for support of dependents, the [Department of Welfare] may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this state and the same are authorized to provide such information as is necessary for this purpose. Only information directly bearing on the identify and whereabouts of a person owing or asserted to be owing an obligation of support shall be requested and used or transmitted by the [Department of Welfare] pursuant to the authority conferred by this act. The [Department of Welfare] may make such information available only to public officials and agencies of this state, other states and the political subdivisions of this state and other states seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support.
>
> Section 2. (Insert effective date.) (22)

Suggested Legislation of the Education Commission of the States. In December, 1973, the Education Commission of the States released Child Abuse and Neglect. (23) This publication

contains a model law, with alternatives, for consideration by the various state legislatures. The model law is as follows:

AN ACT RELATING TO MANDATORY REPORTING OF CHILD ABUSE

BE IT ENACTED by the legislature of the State of _____.

Section 1. Purposes. It is the purpose of this Act, through the complete reporting of child abuse, to protect the best interests of the child, to offer protective services in order to prevent any futher harm to the child, to stablize the home environment, to preserve family life whenever possible, and to encourage cooperation among the states in dealing with the problem of child abuse.

ALTERNATIVE. The public policy of this state is: to protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment when necessary; and for these purposes to require the reporting of child abuse, investigation of such reports by a social agency and provision of services where needed, to such child and family. [Conn. Gen. Stat. Ann. §17-39 (a) (1973)]

Section 2. Definitions. When used in this Act, unless the specific content indicates otherwise:

(a) "child" means any person under 18 years of age;

(b) "abuse" means any physical injury or mental injury inflicted on a child other than by accidental means or an injury which is at variance with the history given of it;

(c) "nelgect" means a failure to provide, by those legally responsible for the care and maintenance of the child: the proper or necessary support; education, as required by law, or medical, surgical or

any other care necessary for his well-being;

(d) "unfounded report" means any report made pursuant to this Act which is not supported by some credible evidence;

(e) "department" means the Department of Social Services.

ALTERNATIVE 1. As used in this Act, "physical or mental abuse" means infliction of physical or mental injury, or causing of deteriotation of a child and shall include failing to maintain reasonable care and treatment or exploiting a child to such an extent that the child's health, morals or emotional well-being is endangered. [Kans. Stat. Ann. New §5 of 1972, Senate Bill No. 36 (L. 1972 Ch. 164)]

ALTERNATIVE 2. Abuse means any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death and such condition or death is not justifiably explained, or where the history given concerning such condition or death is at variance with the degree or type of such condition or the circumstances indicate that such condition or death may not be the product of an accidental occurence. [Colo. Rev. Stat. §22-10-1(4) (1972)]

Section 3. Persons Mandated to Report Suspected Abuse, Sexual Abuse and Neglect. When any physician, surgeon, medical examiner, coroner, dentist, osteopath, optometrist, chiropractor, podiatrist, resident, intern, registered nurse, hospital personnel (engaged in admission, examination, care or treatment of persons), Christian Science practitioner, teacher, school official, social service worker, day care center worker or any other child or foster care worker, mental health professional, peace officer or law enforcement official has reasonable cause to suspect that a child has been subjected to abuse, sexual abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse, he shall immediately report or cause a report to be made to the department. Whenever such person is required to report under this Act in his capacity as a member of the staff of a medical or public or private institution, school, facility or other agency, he shall immediately notify the person in charge of such institution, school, facility or other agency or his designated agent, who shall then become responsible for making a report or cause such report to be made.

In addition to those persons and officials required to report suspected child abuse, sexual abuse and/or neglect, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected.

ALTERNATIVE. Any person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect, such as licensed physicians, interns, or residents, nurses, hospital statt members, teachers, social workers and other persons or agencies having the responsibility for the care of childre, shall report in accordance with subsection "d" of this section.

Any other person having cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect may report in accordance with subsection "d" of this section. [La. Rev. Stat. §14-403 (c) (1) and (2) (1973)]

Section 4. Mandatory Reporting to a Medical Examiner and a Post-Mortem Investigation. Any person or official required to report cases of suspected child abuse, sexual abuse or neglect, under Section 3 of this Act, including workers of the local child protective services, who has reasonable cause to suspect that a child has died as a result of child abuse, sexual abuse or neglect shall report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the local child protective service agency and, if the institution making the report is a hospital, to the hospital.

Section 5. Color Photographs and X Rays. Any person who is required to report cases of child abuse, sexual abuse and/or neglect may take or cause to be taken, at public expense, color photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs and/or X rays taken shall be sent to the department as soon as possible. Whenever such person is required to report under this Act, in his capacity as a member of the staff of a medical or other private or public institution, school, facility or agency, he shall immediately notify the person in charge of such institution, school, facility or agency or his designated delagate, who shall then take or cause to be taken

at public expense, color photographs of physical trauma and shall, if medically indicated, cause to be performed radiological examination of the child. [McKinney's Consol. Laws of N.Y., Soc. Serv., Title 6, §§417 (1973)]

Section 6. Protective Custody. A police officer, a law enforcement official or a designated employee of the city or county department of social services, may take a child into protective custody or any person in charge of a hospital or similar institution or any physician treating a child may keep that child in his custody without the consent of the parent or the guardian, whether or not additional medical treatment is required if the circumstances or conditions of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to that child's life or health. Provided, however, that such custody does not exceed 72 hours and that the juvenile court and the department are notified immediately. The director of the local social services or health agency may give effective consent for medical, dental, health and hospital services for any abused child under the age of 16 years.

ALTERNATIVE. Any physician examining a child with respect to whom abuse is suspected shall, after reasonable attempts to advise the parents, guardian or other person having responsibility for the care of the child that he suspects has been abused, have the right to keep such child in the custody of the hospital for no longer than 96 hours, with or without the consent of his parents, guardian or other person having responsibility for his care, pending study of the family and home by the welfare agency concerned or the filing of a petition to the juvenile court. [Conn. Gen. Stat. Ann. §17-38(d) (1973)]

Section 7. Reporting Procedures.

(a) Reports of child abuse, sexual abuse and neglect made pursuant to this Act shall be made immediately by telephone and shall be followed by a written report within 48 hours if so requested by the receiving agency. The receiving agency shall immediately forward a copy of this report to the statewide central registry on forms supplied by said registry. [See Section 13]

(b) Such reports shall include the following information: the names and addresses of the child and his parents or other persons responsible for his care, if known; the child's age, sex and race; the nature and extent of the child's injuries, sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings; the name and address of the person responsible for the injuries, sexual abuse or neglect, if known; family composition; the source of the report; the person making the report, his occupation and where he can be reached; the actions taken by the reporting source, including the taking of photographs and X rays, removal or keeping the child or notifying the coroner, medical examiner and other information that the person making the report believes may be helpful in the furtherance of the purposes of this Act.

(c) A copy of this report shall immediately be made available to the appropriate law enforcement agency for its consideration.

(d) A written report from persons or officials required by this Act to report shall be admissable in evidence in any proceeding relating to child abuse, sexual abuse or neglect.

ALTERNATIVE. Each report made pursuant to the provisions of subsection "e" shall be made to the agencies as provided for hereinafter, both orally and in written form; both of the reports shall be made as soon as is reasonably possible in the circumstances; but in any case, the written report must be made within 48 hours of the contact, examination, attention or treatment which disclosed the existence of possible abuse. The oral report shall be made either by telephone or direct communication to the local department of social services or the appropriate law enforcement agency. The agency to which the report is made shall immediately notify the other agency. Nothing, however, shall prohibit the local department of social services and the appropriate law enforcement agency from jointly agreeing to cooperative arrangements. The required written report shall be made in all cases to the local department of social services and a copy shall be sent to the local state's attorney.

The oral and written reports shall contain the following information, or as much thereof as the person making the report shall be able, in the circumstances, to furnish:

1. The name and home address or addresses of the child(ren) and the parents or other persons responsible for the care of the child(ren) in question.

2. The present whereabouts of the child(ren) if not the same as the home address or addresses.

3. The age or ages of the child(ren).

4. The nature and extent of the injuries of the child(ren) in question, including evidence or information available to the person or agency rendering the report of previous injury(ies) possibly resulting from abuse and

5. All such information available to the reporter which would be of aid in establishing the cause of the injury(ies) and the identify of the person(s) responsible therefore. [Md. Code Ann. §27-35(a) (D) (1973)]

Section 8. Duties of the Department Upon Receipt of the Report.

(a) The department shall make a thorough investigation promptly upon receiving either the oral or the written report. The primary purpose of such an investigation shall be the protection of the child.

(b) The investigation shall include the nature, extent and cause of the child abuse, sexual abuse or neglect; the identity of the person responsible therefore; the names and conditions of other children in the home; an evaluation of the parents or persons responsible for the care of the child; the home environment and the relationship of the child(ren) to the parents or other persons responsible for their care; and all other pertinent data.

(c) The investigation shall include a visit to the child's home, a physical, psychological, or psychiatric examination of all children in that home; an interview with the subject child. If the admission to the home, school or any other place that the child may be, or permission of the parent or other persons responsible for the child(ren) for the physical, psychological or psychiatric examination cannot be obtained, then the juvenile court or the district court, upon cause shown, shall order the parents or persons responsible and in charge of any place where the child may be to allow entrance for the interview, above examinations and investigation.

(d) If, before the examination is complete, the opinion of the investigators is that immediate removal is necessary to protect the child(ren) from further abuse or neglect, the juvenile court or the district court, on petition by the investigators and with good cause being shown, shall issue an order for temporary removal and custody.

(e) The county agency responsible for the protection of juveniles, or county welfare unit, shall make a complete written report of the investigation together with its recommendations. Such reports shall be made available to the juvenile court or district court, the district attorney and the appropriate law enforcement agency upon request. [Tex. Family Code, Title 2, §34.05 (1973)]

(f) The department shall make a written report or case summary, together with services offered and accepted, to the state central registry on forms supplied by the registry for that purpose.

Section 9. Immunity From Liability. Any person, official or institution participating in good faith in the making of a report, the making of photographs or the removal of a child pursuant to this Act, shall have immunity from any liability, civil or criminal, that otherwise might result by reason or such actions. For the purpose of any proceedings, civil or criminal, the good faith of any person required to report cases of child abuse, sexual abuse or neglect shall be presumed.

ALTERNATIVE 1. A person reporting harm shall be presumed to be acting in good faith and shall, therefore, be immune from any liability, civil or criminal, that might otherwise be incurred or imposed for such actions. [Tenn. Code Ann. §37-1209 (1973)]

ALTERNATIVE 2. Any person, other than the alleged violator, reporting pursuant to this section in good faith shall have immunity from liability that otherwise might be incurred or imposed. Such immunity shall extend to participation in any judicial proceeding resulting from such report. [La. Rev. Stat. §14-403 (e) (1973)]

Section 10. Abrogation of Privileged Communications. Any privilege between husband and wife or between any professional person, except lawyer and client, including but not limited to physicians, ministers, counselors, hospitals, clinics, day care centers, and schools and their clients, shall not constitute grounds for excluding evidence at any proceeding regarding child abuse, sexual abuse and/or neglect of a child or the cause thereof.

Section 11. Penalty for Failure to Report.

(a) Any person, official or institution required by this Act to report a case of suspected child abuse, sexual abuse or neglect, who willfully fails to do so shall be subject to a fine of $100 and up to five days in jail.

(b) Any person, official or institution required by this Act to report a case of suspected child abuse, sexual abuse or neglect, and who willfully fails to do so, shall be civilly liable proximately caused by such failure.

Section 12. The Guardian Ad Litem.

(a) The court, in every case filed under this Act, shall appoint a guardian ad litem for the child. The guardian shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian pursuant to this Act. The guardian ad litem shall, in general, be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses in both the adjudicatory and dispositional hearings, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

(b) At any time after the completion of the adjudicatory hearing of a case of child abuse, sexual abuse or neglect and a finding of dependency therein, the court may, on its own motion, or the motion of the guardian ad litem, order the examination by a physician, psychologist or psychiatrist, of any parent or other person having custody of the child at the time of the alleged abuse, sexual abuse or neglect, if the court finds such an examination is necessary to the proper determination of the dispositional hearing of the case. The dispositional hearing may be continued pending the completion of such examination. The physician, psychologist or psychiatrist conducting such an examination may be required to testify in the dispositional hearing concerning the results of such examination and may be asked to give his opinion as to whether the protection of the child requires that he not be returned to the custody of his parents or other persons having custody of him at the time of the alleged abuse, sexual abuse or nelgect. The rules of evidence as provided by law

shall apply to such testimony except that the physician, psychologist or psychiatrist shall be allowed to testify to conclusions reached from the hospital, medical, psychological or laboratory records, tests or reports, provided the same are produced at the hearing. Persons so testifying shall be subject to cross-examination as are other witnesses. No evidence acquired as a result of any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the abuse or nonaccidental injury of the child.

ALTERNATIVE. In all hearings the judge of the juvenile court shall appoint a guardian ad litem who shall be an attorney at law to appear for, represent and defend:

(a) A child who is the subject of proceedings under this Act; or

(b) A parent who is a minor, or who is a mentally ill person or otherwise incompetent, and whose child is the subject of proceedings under this Act. The guardian ad litem shall make an independent investigation of the facts and representations made in the petition and he may be allowed a reasonable fee for such services, to be fixed by the juvenile court and taxed as costs in such proceedings; such costs may be taxed to the parent, conservator, or custodian, or they may be taxed to the county and paid out of the county general fund. [Kans. Stat. Ann., §338-821 (1972)]

Section 13. Establishment of a Central Registry.

A.

(1) There shall be established a statewide central registry for child abuse, sexual abuse and neglect made pursuant to this Act.

(2) There shall be a single statewide telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse, sexual abuse and neglect and that all persons so authorized by this Act may use for determining the existence of prior records in order to evaluate the condition or circumstances of the child before them. Such

oral telephone reports shall immediately be transmitted by the central registry to the local child protective services. If the records indicate a previous report concerning the subject of the report or other pertinent information, the appropriate local protective avency shall be notified of these facts.

(3) The central registry shall contain, but shall not be limited to: all information in the written report; record of the final disposition of the report including services offered and services accepted; the plan for rehabilitative treatment; the names and identifying data, dates and circumstances of any persons requesting or receiving information from the registry; and any other information which might be helpful in furthering the purposes of this Act.

(4) Reports made pursuant to this Act, as well as any other information obtained, and reports written or photographs taken concerning such reports in the possession of the department shall be confidential and shall be made available to (a) a physician who has before him a child who he reasonably believes may have been abused, sexually abused or neglected; (b) a person authorized to place a child in protective custody when such person has before him a child whom he reasonably believes may have been abused, sexually abused and/or neglected and such person requires such information to determine whether to place such child in protective custody; (c) a duly authorized agency having responsibility for the care or supervision of the subject of a report; (d) any person who is the subject of a report; (e) a court where it determines that such information is necessary for the determination of an issue before the court; (f) any person engaged in bona fide research.

After a child, who is the subject of a report, reaches the age of 18 years, access to a child's record under subsections A and B of this section shall be permitted only if a sibling or offspring of such child is before such person and is a suspected victim of child abuse,

sexual abuse and/or neglect. In addition, a physician or person in charge of any institution or agency making a report shall receive, upon request, a summary of the findings and action taken by the local child protection agency in response to the report. The amount of such detail shall depend upon the sources of the report and shall be established by regulations created by the commissioner of the central registry. However, under no circumstances shall the information be released unless the person's or official's capacity is confirmed by the department and the department and the released information states whether or not the report is founded or unfounded. A person given access to the names or other information identifying a subject of the report, except the subject of a report, shall not divulge or make public such identifying information unless he is the district attorney or other law enforcement official and the purpose is to initiate court action.

(5) Unless an investigation of a report conducted pursuant to this Act determines there is some credible evidence of alleged abuse, sexual abuse or neglect all information identifying the subject of the report shall be expunged from the central registry forthwith.

(6) In all other cases, the record of the report to the central registry shall be sealed at no later than 10 years after the subject child's 18th birthday. Once sealed, the record shall not otherwise be available, unless the commissioner of the central registry upon notice to the subjects of the report, gives his personal approval for an appropriate reason. In any case, and at any time, the commissioner may amend, seal or expunge any record upon good cause shown and notice to the subjects of the report.

(7) At any time, the subject of a report may receive, upon request, a report of all information contained in the central registry; provided, however, that the commissioner is authorized to prohibit the release of data that would identify the person who made the report or who cooperated in a subsequent investigation which he reasonably finds to be detrimental to the safety or interests of such person.

(8) At any time, subsequent to the completion of the investigation, but in no event later than 90 days after the receipt of the report, subject of the report may request the commissioner to amend, seal or expunge the record of the report. If the commissioner refuses or does not act within a reasonable time, but in no event later than 30 days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the central registry should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this Act. The appropriate local child protective agency shall be given fair notice of the hearing. The burden, in such a hearing, shall be on the department and the appropriate local child protective services. In such hearings, the fact that there was such a finding of child abuse, sexual abuse or neglect shall be presumptive evidence that the report was substantiated.

(9) Written notice of any amendment or expungement made pursuant to the provisions of this Act, shall be served on each subject of such report and to the appropriate local child protective service. The latter, upon receipt of such notice, shall take similar action regarding any central local registry for child abuse, sexual abuse and/or neglect.

(10) Any person who willfully permits and any other person who encourages the release of data or information contained in the central registry to persons not permitted by this Act, shall be guilty of a Class A misdemeanor.

B. The central registry may adopt such rules and regulations as may be necessary to encourage cooperation with other states in exchanging reports to effect a national registration system.

Section 14. Authorization for Appropriations.

There are hereby authorized to be appropriated such sums as may be necessary to effectuate the purposes of this Act.

Section 15. Effective Date. This Act shall take effect _____.

Recommendations

Based on the information presented in this paper, it is recommended that:

1. The fines and penalties provided in the laws of Mississippi for abused and neglected children be reviewed to determine if they are realistic, if they are comparable to similar penalties in other states, and if they are high enough to fit the seriousness of the actions involved. If they are not comparable, then it is recommended that the laws be amended to provide for more appropriate penalties.

2. The model law proposed by the Education Commission of the States be enacted for Mississippi, with the following exceptions:

A. Section 1 be enacted without the alternative.

B. Section 2, the definition of abuse, combine 2(b) and Alternative 2.

C. Section 2, change to read "'department' means the state department of public welfare."

D. Section 3, add "or Head Start" after "day care."

E. Section 3 be enacted without the alternative.

F. Section 6, and others, should designate local agencies, such as the welfare office in the county, in the place of the "city or county department of social services."

G. Section 6 be enacted without the alternative.

H. Section 7 be enacted without the alternative.

I. Section 8, and elsewhere, should substitute the names of the appropriate officials and courts.

J. Section 9 be enacted without the alternatives.

K. Section 12 be enacted without the alternative.

3. The law be amended so as to put the burden of proof on the parent or parents as to why they should retain custody of a child following the second reporting of an abuse of the child.

4. The law be amended such that a court may require, as a condition of continued custody of a neglected or abused child, a parent or parents to undergo counseling.

5. A feasibility study be made of establishing "child protection centers" such as are authorized in the laws of Louisiana.

NOTES

1. Education Commission of the States, Child Abuse and Neglect: Alternatives for Legislation. Denver, Colorado: The Commission. December, 1973. Pp. 6, 8.

2. Ibid., p. 8.

3. Ibid., p. 9.

4. Ibid.

5. Ibid., p. 10.

6. Ibid., p. 11.

7. Ibid., p. 13.

8. Mason P. Thomas, Jr., "Child Abuse and Neglect Part I: Historical Overview, Legal Matrix, and Social Perspectives," North Carolina Law Review. February, 1972. p. 299.

9. Ibid., p. 304.

10. Ibid.

11. Hewlett v. George, 68 Miss. 703, 711, 9 So. 885, 887 (1891).

12. Johnson v. State, 21 Tenn, 282 (1840).

13. People ex rel. O'Connell v. Turner, 55 Ill. 280 (1870).

14. In re S, 46 Misc. 2d 161, 259 N.Y.S. 2d 164 (Family Court 1965).

15. Henry H. Foster, Jr. and Doris Jones Freed, "A Bill of Rights for Children," Family Law Quarterly, 1972. p. 347.

16. Richard H. Hansen, "Suggested Guidelines for Child Abuse Laws," Journal of Family Law, 1967. pp. 61-80.

17. Ibid., p. 61

18. These included Children's Bureau, U.S. Department of Health, Education, and Welfare, The Abused Child--Principles and Suggested Language for Legislation on Reporting of the Physically Abused Child (1963); Committee of State Officials on Suggested State Legislation, Council of State Governments, Suggested State Legis-

lation (1965); Children's Division, American Humane Association, Guidelines for Legislation to Protect the Battered Child (1963); and American Medical Association, Physical Abuse of Children--Suggested Legislation (1965).

19. Recent news reports indicate that the Department of Health, Education and Welfare has awarded a $155,000 grant to the Institute of Judicial Administration in New York to write a model child abuse and neglect law.

20. Those states which have granted statutory authority to private child protective agencies or societies may wish to include the language shown in brackets.

21. Council of State Governments, Suggested State Legislation. The Council, 1965. pp. 67-68.

22. Council of State Governments, Suggested State Legislation. The Council, 1963. pp. 183.

23. See Note #1.